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POLITICAL EDUCATION**

The Society for Political Education.

(ORGANIZED 1881.)

OBJECTS.—The SOCIETY was organized by citizens who believe that the success of our government depends on the active political influence of educated intelligence, and that parties are means, not ends. It is entirely non-partisan in its organization, and is not to be used for any other purpose than the awakening of an intelligent interest in government methods and purposes tending to restrain the abuse of parties and to promote party morality.

Among its organizers are numbered Democrats, Republicans, and Independents, who differ among themselves as to which party is best fitted to conduct the government, but who are in the main agreed as to the following propositions:

The right of each citizen to his free voice and vote must be upheld and all paper money must be convertible on demand.

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The office is the man the office holds.

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UNITED STATES OF AMERICA.

Persons who become members of the Society are, however, required to endorse the above.

METHODS.—The Society proposes to carry out its objects by submitting from time to time to its members lists of books which it regards as desirable reading on current political and economic questions; by selecting annual courses of reading for its members; by supplying the books so selected at the smallest possible advance beyond actual cost; by furnishing and circulating, at a low price and in cheap form, sound economic and political literature in maintenance and illustration of the principles above announced as constituting the basis of its organization; and by assisting in the formation of reading and corresponding circles and clubs for discussing social, political, and economic questions.

ORGANIZATION.—The Society is to be managed by an Executive Committee of twenty-five persons, selected from different sections of the United States.

SOCIETY FOR POLITICAL EDUCATION.

MEMBERSHIP.—ACTIVE MEMBERS are such persons as will pledge themselves to read the Constitution of the United States, and that of the State in which they reside; who will agree to read at least one of the annual courses as included in the *Library of Political Education*, and who will pay an annual fee of 50 cents (which may be forwarded in postage-stamps), entitling the member to receive the tracts and lists published by the Society during the year.

Parents, guardians, or teachers will be considered as having fulfilled the above obligations if they make their children, wards, or pupils follow the prescribed course of reading.

In order to make the membership widespread, and especially to enable students in the public schools and colleges to take part in the Society, the annual fee for Active Members has been made so small that the proceeds are inadequate to carry out the objects of the Society. To provide for the resulting deficiency, the Executive Committee has established a special membership for such public-spirited persons as wish to promote political and economic education, as follows :—

Any person may become a **CO-OPERATING** Member on the annual payment of \$5.00 or more, which shall entitle such member to receive the tracts and lists published by the Society, and to nominate two Fellowship Members. To persons so nominated the Secretary will send the series of Economic Tracts for 1880-81, stating that they are presented through the courtesy of such Co-operating Member.

SECOND YEAR'S WORK, 1882.—During the past year the Society has received fees from some 1,400 Members, with subscriptions from 170 Co-operating Members. The number of Auxiliary Societies has also been largely increased.

PUBLICATIONS.—In order to enable persons in places where no public library is accessible, to procure, at a reduced rate, the volumes recommended by the Executive Committee for the annual courses of reading, the Committee has arranged for special editions of these in uniform binding, with the imprint of the Society upon the cover, which will be issued in annual series under the general title of the *Library of Political Education*, and can be supplied only in sets.

Members who join for the year 1883 may read either the first or the second series of the *Library*, but the Committee recommends them to begin with the first series, unless they have already read the books comprised in it.



CONSTITUTIONAL HISTORY

AND

POLITICAL DEVELOPMENT

OF THE

UNITED STATES.

BY

SIMON STERNE,

OF THE NEW YORK BAR.



FOURTH REVISED EDITION.

CASSELL, PETTER, GALPIN & CO.,

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P R E F A C E .

THE request addressed to me by the publishers to write for non-professional readers a book on the Constitution of the United States led me to inquire whether, in the multiplicity of works on this, as on almost every other conceivable subject touching large popular interests, there is any room to say something novel, or put into a new form the old matter which has been said and written over and over again by abler tongues and pens than mine. It occurred to me that a sketch of the Constitution of the United States as it stands in text, and as it is interpreted by the Supreme Court, accompanied by a history of the political controversies which resulted in the formation of and changes in that instrument, together with the presentation of the actual situation of political parties and questions, which, in their turn, may produce constitutional changes, would, if given within a limited space, present such a view of the institutional condition of the United States as to justify this book to the student of political history.

At no time in the history of the United States have its institutions awakened such widespread and friendly interest as at present. It is true that dur-

ing the great civil war, from 1861 to 1865, the news from the contending armies was read with greater avidity than that which is awakened by the items of a commercial, agricultural, and industrial character, which now in the main fill the columns of the press; but a far greater proportion of the human family are more largely concerned in these very items than then were in our military contests, inasmuch as since that period the United States has become the largest contributor to the food supply of the world.

The period of the history of our country beginning with the close of the war is a most interesting one to the student of political institutions. European statesmen doubted, and many thoughtful Americans at times had misgivings, whether our institutions could bear the strain of the conditions in which at the close of the war the national government was placed. Every war issue has been met and successfully disposed of. The ills of an improperly laid and collected revenue, a bad civil service, mischievous methods of taxation and corrupt municipal administration still exist, but not one of these evils, properly speaking, can be said to date from the war period, but the roots of them were planted many years before the slavery agitation was at its height. Nigh a million of men, who in the North and South were under arms at the

close of the war, were disbanded and absorbed again by the agricultural and industrial enterprises of the country, and no appreciable increase of crime or lawlessness was visible in the community. The government returned to a sound currency from a depreciated paper war currency, notwithstanding the fact that great masses believed the return to specie payment would be the ruin of individual enterprise. A large proportion of the debt created by the war has already been paid off; and the remainder, by the establishment of a financial credit second to none in the world, refunded at so low a rate of interest that the burden of the debt, taking into consideration the increase of population, is but a third of what it was at the close of the war. The revenue of the country is so far in excess of its financial needs that but for the ingenuity of politicians to devise jobs to absorb public funds, a bad civil service and governmental extravagance, a still greater reduction would have been made. As it is, the debt of the United States, although the most recent of the great governmental debts of the world, may still be the first to be paid off.

All these evidences of elasticity of institutions, enabling us successfully to meet unlooked-for emergencies in our country's needs, have from time to time elicited the admiring expressions of publicists the world over, and caused them more closely to

study institutions which, while they on the one hand secure individual freedom of action, seem not to be devoid of the power to produce such far-reaching results as are supposed to be the special advantages of the more paternal forms of government.

To attribute the whole of the prosperity of the people of the United States to its institutions would be puerile in the extreme. Any constitutional form of government securing freedom of action in dealing with its practically exhaustless resources, among which may be enumerated vast treasures of mineral wealth, fruitful soil, and beneficent climate, coupled with a geographical situation which almost wholly prevents foreign complications, would have made for the inhabitants of the vast domain known as the United States a home filled with comfort, luxury, and wealth, and have attracted seekers of fortune from every quarter of the globe.

That the institutions of the United States did, however, largely favor the growth of material wealth cannot be denied. Not to speak of other advantages afforded to individual enterprise, the entire absence of any inter-state custom-house from Maine to Florida, and from the Atlantic to the Pacific, has given the inestimable and incalculable advantages of free trade in its most absolute form over a larger surface and among more varied conditions of an indus-

trial and agricultural character than unimpeded exchanges exist elsewhere on the face of the globe. While it is true that in more recent years (since 1846) European nations have let down the barriers of protection toward each other, by treaty and more liberal legislation, yet in the United States the practical advantages of the system of free trade commenced almost synchronously with the teaching of the doctrine by Adam Smith, in 1776. The errors of protection, which still govern the legislation of the United States in its relations with foreign countries, and to a degree counterbalance in evil the benefits thus conferred, bring loss, but in the limited ratio that foreign commerce bears to a nation's internal exchanges; and as the ratio of foreign commerce is at best not one to twenty of domestic interchange, the benefits conferred by the freedom of exchange within the United States must have been out of all proportion greater than the injury inflicted by the protective system inaugurated in 1861, which is, if the signs of the times do not mislead, fast crumbling away.

That there is ample scope for the political reformer, and much material to work upon in the United States as elsewhere, and in some respects more than elsewhere, will in the following pages be frankly admitted. The methods of legislation are wofully primitive and defective, and the practice

ofttimes corrupt. The existing system of representation is inharmonious and unphilosophical; the tariff legislation a mass of injustice and incongruities, resulting in a collection of revenue at a most burdensome expense to the consumer. Municipal government is too easy a prey to jobbery and venality of every description. The civil service goes by favor rather than by merit. Political parties, although they divide upon numberless unimportant issues, seldom upon fundamental principles of government, almost constantly unite in favoring monopolies in disregard of individual rights and interests, and in almost every attack upon the public purse, frequently vieing with each other in bidding for popular favor at the sacrifice of the more permanent interests of the community. Yet these evils, mischievous as they are, are not without remedy. The one crowning merit of American institutions lies in the fact that an earnest and persistent appeal to the good sense of the people has, since the formation of the Constitution, always evoked a spirit able to cope with even more formidable national vices. We have, therefore, strong reason to expect that these lesser defects will be remedied by deliberately formulated constitutional changes adequate to extirpate them.

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CONSTITUTIONAL HISTORY
OF THE
UNITED STATES.

CHAPTER I.

CONSTITUTION OF THE UNITED STATES.

IT would far transcend the limits of a book intended for popular purposes, to enter into an elaborate investigation of all the causes which contributed to the creation of the United States Constitution, or to trace in detail the reasons why the constitutions of the American States all came to be written documents, instead of being unwritten and elastic principles of government, like the Constitution of Great Britain. Without much sacrifice of space, however, a few salient elements may properly here have attention drawn to them.

The powers of the governments of the English colonies in America, before the Revolutionary war, beginning in 1775, were all written instruc-

tions, accompanied by charters and grants of title and formulated frameworks of government. The English colonists were thus accustomed to written documents as the source of governmental power, and the meaning of their provisions was the test of governmental limitations.

At an early date in the history of the origin and settlement of Virginia no taxes were to be levied by the Governor without the consent of the General Assembly, and when raised they were subject to an appropriation by the Legislature of the colony. The Plymouth colonists, who were the settlers in New England, acted originally under a form of voluntary compact; but found it difficult to obtain proper respect for governmental authority under this voluntary form of association, and as early as January, 1629, by a patent from the Council under the charter of King James of 1620, obtained sanction and authority for the laws which they subsequently enacted. The fact that this Patent lacked royal assent was the excuse for its withdrawal by Charles II., and it was not until 1691, under the charter granted by William and Mary, that unquestioned royal authority was granted for the laws enacted by the New England colonists.

At an early period in the history of the English

colonies in America the rights of the inhabitants to personal liberty were based upon Magna Charta and on the Petition and Bill of Rights ; and the common law, except in so far as it may have been modified by special charters, was the prevailing law of the land.

The principle upon which the common law was thus recognized as the prevailing law, was that it was the birthright and inheritance of every emigrant in so far as it was applicable to his condition.

There were three classes of government, instituted in America by the English crown. One was the provincial establishments, in which the Governor was made supreme ; under this form of government New Hampshire, New York, New Jersey, Virginia, the Carolinas, and Georgia were administered. The second was called proprietary governments, which embraced grants to individuals with governmental powers ; under this form, in their earliest history under the English crown, Maryland, Pennsylvania, and Delaware were constituted. The third was charter governments, of which Massachusetts was the leading example, and Connecticut and Rhode Island as derivative forms from the Massachusetts grant. Under all these forms, in process of time, local Legislatures were established, which drew to themselves a considerable

proportion of the governmental power which had originally been parceled out to the governors of the colonies. In both the proprietary and charter governments, the colonists, during all their early struggles with the crown, insisted that they had an inherent right of representation ; the crown, on the other hand, insisted that it was a mere privilege, held at its will. In some of the colonies the laws were required to be sent to the King for his approval ; in others, they were not so required. The general feeling on the part of the colonists that it was their right to make their own laws is best expressed in the declaration drawn up by the Congress of the nine colonies assembled at New York in October, 1765, wherein they are made to say, " that they owe the same allegiance to the crown of Great Britain that is owing from his subjects born within the realm, and all due subordination to that august body, the Parliament of Great Britain ; that the colonists are entitled to all the inherent rights and liberties of his natural-born subjects within the kingdom of Great Britain ; that it is inseparably essential to the freedom of a people and the undoubted right of Englishmen that no taxes be imposed upon them but with their own consent, in person or by their representatives ; that the people of the colonies are not, and from their local circumstances

cannot, be represented in the House of Commons ; that the only representatives of the colonies are persons chosen by themselves ; that no taxes could be constitutionally imposed upon them but by their respective Legislatures ; that the supplies of the crown being free gifts of the people, it is unreasonable and inconsistent with the principle and spirit of the British Constitution for the people of Great Britain to grant to His Majesty the property of the colonies ; and that trial by jury is an inherent and invaluable right of every British subject in the colonies.”

The united colonies admitted the right of Parliament to pass general acts for the amendment of the common law to which the colonies were subject, or general acts for the regulation of trade and commerce throughout the whole empire, but denied the right of Parliament to pass special acts applicable only to a part of His Majesty’s subjects, to wit, the inhabitants of the colonies, and more particularly special acts imposing taxation. The Stamp Act being such a special act, the colonies, at the invitation of Massachusetts, assembled by their representatives in September, 1774, at Philadelphia, in a Congress, and thus established, for the first time in the history of the English-American colonies, a general deliberative body, deriving

its authority from the people of the colonies alone. This Congress continued to exercise power until March, 1781, and was then superseded by the Congress of the Confederation, which came into existence during the latter part of the War of Independence ; it then being manifest that a new nation would be born. The Continental Congress avoided creating jealousy between the several colonies, by placing them all, independent of size or numerical strength, on the same footing; inasmuch as each combined delegation from each separate colony had but a single vote.

The second session of this Congress of delegates met in May, 1775, immediately after the opening of the war of Independence by the battles of Lexington and Concord. This Congress then assumed supreme direction of the war of Independence, and was, to all intents and purposes, the government of the united colonies after the 4th of July, 1776, when, by the promulgation of the Declaration of Independence, they declared their severance from the British crown, their right to make treaties with foreign governments, and their establishment as a nation. It appointed the officers of the army; it pledged the credit of the united colonies for the payment of the expenses of military organization ; it apportioned the amounts

which each State was to pay toward the general expenses ; it adopted rules for the government of the army and navy ; it granted commissions by letters of marque to capture the vessels of Great Britain ; and exercised, in short, substantially all the powers which subsequently, first by the Articles of Confederation and then more fully by the Constitution of the United States, were ceded by the several States to the general or national government.

The severance of the colonies from Great Britain, both by the result of the war and by the formal Declaration of Independence, made each particular colony a sovereign and independent State, except in so far as it might voluntarily consent to subject its sovereignty, by cession, to the general government of all the States. Although this is true of the original thirteen States, it is not equally true of the remaining twenty-five, as their very existence as States depended upon the fiat of the Federal Congress.

Several of the States, between the breaking out of the War of Independence and the formation of the Articles of Confederation, framed constitutions of their own, in which they formally declared their independence of the mother country, and reënacted such parts of Magna Charta and the Bill of Rights as were applicable to their condition, together

with statements of the rights of man expressive of the wider views and the more revolutionary principles which had found acceptance with the colonists from the freedom of movement and independence of character incident to and formed by American colonial conditions. These views, as to forms of expression, were very considerably influenced by the theoretical teachings of the French Encyclopædistes, whose works, to no small degree, quickened the thoughts and influenced the methods of expression of Jefferson, Adams, Madison, and Hamilton, who were the leading minds of the Continental Congress.

Virginia, New Hampshire, New York, and South Carolina had, before 1778, passed constitutions for the people of their States as sovereignties, and subsequently every State of the Union, after the Articles of Confederation were formed, by a properly delegated convention of its people, put in shape, and, by subsequent submission to the people, caused the passage of organic laws, called constitutions, by which the general framework of the institutions under which they were living was mapped out, the division of Executive, Judicial, and Legislative functions clearly defined, and the rights inherent in the people beyond governmental control, expressed and insisted upon.

The revolutionary Congress, recognizing the fact that its existence would end with the struggle, and acting on the assumption that the struggle would result favorably to the colonies, appointed in June, 1776, a committee composed of one member from each colony, to consider the form of Articles of Confederation to be entered into between the colonies, as the basis of a permanent form of government. These Articles of Confederation formed the subject of debate in Congress until the 15th of November, 1777, when they were adopted. A circular letter was prepared to the several States requesting authority from the States to authorize their delegates to Congress to subscribe the Articles of Confederation. The States proposed many amendments, which were all rejected by Congress, because Congress deemed it inexpedient to accept any amendments for fear of the delay. A draft was thereupon prepared and sent to all the States on the 26th of June, 1778, and was ratified by them all, except Delaware and Maryland, which respectively withheld their ratifications, the one until 1779 and the other until 1781.

From the moment of the organization of government under the Articles of Confederation, the question of the ownership of the lands which theretofore had belonged to the crown, in the several States, was an irritating subject between

the States, as was also the not-clearly defined boundaries between the States. The only way to overcome the difficulty first named, was to conform to the suggestion of Congress, that the several States should cede the crown lands within their borders to the general government, as lands belonging to the people at large. The name of the confederacy was the United States of America. Under it the following powers of government were secured to the nation and ceded by the States:

Congress was empowered to determine on peace or war with foreign nations, to send and receive ambassadors, and to make treaties of commerce ; but each State was free to levy whatever import or export duties it saw fit, to determine upon the rules of capture by land or sea, and to appoint courts for the trial of cases of captures on high seas and piracy. In all cases of dispute between the States, if the agents of the States could not by joint consent agree upon judges to try their causes as they might arise, Congress was empowered to constitute a court by a most cumbersome method. Three persons were appointed from each State, and then the disputing States struck one each, until thirteen remained, from which number Congress drew out seven or nine by lot, a majority of which determined the cause finally.

Congress was also empowered to regulate the coinage, to afford postal facilities, and to appoint the officers for the land and naval forces.

During the recess of Congress, its powers were conferred upon a committee of the States—one delegate from each State—with the limitation, however, that upon almost every important question it required the assent of nine States before the measure could become operative as a law.

Under these Articles of Confederation the treaty of peace with England was concluded and the American nation was governed until the final adoption of the Constitution of the United States. The main defect of the Articles of Confederation was, that although powers sufficient to create a government were ceded, there was no power to raise revenue, to levy taxes, or to enforce the law, except with the consent of nine States; and although the government had power to contract debts, there were no means by which to discharge them. The government had power to raise armies and navies, but no means wherewith to pay them, unless the means were voted by the States themselves; it could make treaties with foreign powers, but had no means to coerce a State to obey such treaty. In short, it was a government which had the power to make laws, but no power to pun-

ish infractions thereof. Washington himself said . “ The Confederation appears to me to be little more than the shadow without the substance, and Congress a nugatory body.”

Chief Justice Story, in summing up the leading defects of the Articles of Confederation, says : “ There was an utter want of all coercive authority to carry into effect its own constitutional measures ; this of itself was sufficient to destroy its whole efficiency as a superintendent government, if that may be called a government which possessed no one solid attribute of power. In truth, Congress possessed only the power of recommendation. Congress had no power to exact obedience or punish disobedience of its ordinances ; they could neither impose fines nor direct imprisonments, nor divest privileges, nor declare forfeitures, nor suspend refractory officers. There was no power to exercise force.”

This absence of all coercive power was most directly and injuriously felt in the financial administration of the nation. The requisitions of Congress for money were disregarded at will. The consequence was, that the treasury of the United States was empty ; the credit of the confederacy was gone ; and while public burdens were increasing, public faith was prostrate. Even the interest of the pub-

lic debt remained unpaid, and the bills of credit that had been issued during the Revolution and immediately subsequent thereto sank to so low a value that the public debt was substantially repudiated. As an illustration of this fact, it may be remarked that of the requisitions for the payment of the interest upon the domestic debt from 1782 to 1786, which amounted to more than six million dollars, only a million was paid. Each State saw fit to exercise its sovereign power to regulate commerce with the other States, and this created dissensions among the States; so that in 1784 the national Congress formally declared its inability to maintain the public credit or to enforce obedience to its own dictates, and from time to time, up to 1787, declared in various public ordinances its inability even to enforce its own treaty power.

This state of things became intolerable, and was, by the leading men who had guided the colonies through the struggles of the War of Independence and aided in the formation of the Articles of Confederation, recognized as a mischief which would result in the disintegration of the union of the States. Hence an active propaganda was instituted in all the States for the preparation of more perfect articles of union and the creation of a government representing the States as a nation. In February,

1787, a resolution was adopted by Congress recommending a convention in Philadelphia of delegates from the several States for the purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions therein as should, when agreed to in Congress and confirmed by the several States acting as sovereigns, be adequate to the exigencies of government and the preservation of the Union.

The convention met, and, after very full consideration, determined that amendments to the Articles of Confederation would be inadequate for the purposes of the government, and prepared a new Constitution, the ratification of the conventions of nine States to be deemed sufficient for the establishment of the constitution among the States so ratifying the same. This Constitution was submitted to the several States, and was ratified by eleven of them, North Carolina and Rhode Island standing out, the former until November, 1789, and the latter until May, 1790.

Although the government was organized by the ratification by eleven States, the ratification by all the States made that instrument the supreme law of the land, and that Constitution, with its amendments, from that time forth, remained the charter

under which the government of the United States has been administered in all its foreign and inter-state relations.

In the interpretation of this chart of government it must be remembered that the government of the United States is one of delegated powers ; that in theory the States possess all the sovereign powers not delegated, either expressly or by necessary implication, to the general government : and that the vast body of law, known as constitutional law, in the United States, deals first with the interpretation of these powers delegated to the general government, and secondly with the reserved rights of the States under their respective State constitutions, and the reserved rights of the people never delegated either to the State or to the general government.

The history of the Constitution shows, first, that the compact between the States was intended to be indissoluble. The Articles of Confederation in terms said so, and when they were found inadequate for the purpose, the Constitution was framed, "to form a more perfect union." Likewise the States are indestructible. The Constitution is a compact of States, and the States are, therefore, an integral part of the nation ; without them there is no compact which can bind non-assenting States.

This has been decided in a recent case (*Texas vs. White*) by the Supreme Court of the United States.

The Constitution makes the national government, in all matters delegated to it, the supreme law of the land, and not only is it the supreme power in all such matters wherein the Congress of the United States has, in pursuance of constitutional authority, acted, but it is the supreme authority whenever it chooses to take up a subject which is delegated to the government of the United States, although the States, in the absence of such action on the part of the general government, have seen fit to pass laws of their own to meet the emergencies. A notable instance of this is bankruptcy. From time to time bankruptcy laws have existed in the United States, enacted by the general Congress, and have been repealed. During the period of repeal the various States have enacted insolvency and bankrupt laws which, on the instant when the general government again took up the subject by passing a new bankruptcy law, became dormant and inert, and remained in abeyance until the national law was in its turn repealed.

The Territories of the United States have no reserved rights. They can be dealt with by the general government in such way as it may see fit, and not until a Territory becomes sufficiently populous

to be admitted as a State does it become clothed with all the reserved rights of States, and when so clothed it is as sovereign and independent a community as though it had been one of the original thirteen States which had entered into the compact.

Amendments to the Constitution are provided for in two ways. In the one in which Congress has the initiative, it may recommend amendments by a vote of two-thirds of both Houses, and such amendments shall become valid when ratified either by the Legislatures of three-fourths of the several States or by conventions of three-fourths thereof, as one or the other of these modes of ratification may be proposed by Congress. Another mode provided by the Constitution is for Congress, on the application of the Legislatures of the several States, to call a convention for proposing amendments; the work of which convention must be equally ratified by the Legislatures of three-fourths of the States or by conventions in three-fourths thereof. The only limitation upon the power of amendment of the Constitution is, that no State, without its consent, shall be deprived of its equal suffrage in the Senate. This provision was deemed necessary in order to prevent an amendment by the more populous and larger States which

should deprive the few smaller States, such as Rhode Island or Delaware, of their equal representation in the Senate. This power of amendment takes away all excuse for revolution, because the instrument which is the supreme law of the land provides a method by which the popular will can act upon it so as to remedy or remove any existing or supposed abuses.

The general provisions of the Constitution which do not fall under the divisions of Legislative, Judicial and Executive functions, are enumerated in the fourth and sixth articles of the Constitution of 1789, the amendments of 1789, and 1790, 1794, 1798, 1804, and what are known as the thirteenth, fourteenth and fifteenth amendments, which were the result of the Civil War. These provisions in general terms provide that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; that the citizens of each State shall be entitled to the privileges and immunities of the citizens of the several States; that persons who are fugitives from justice shall be delivered up to the State having jurisdiction of the crime; a provision by which persons who were held to labor in one State were required to be delivered up if they fled into another for the purpose of escap-

ing from such servitude ; a section allowing States to be admitted into the Union, but prohibiting Congress from creating new States from existing States without the consent of the latter ; and that the United States shall guarantee to every State in the Union a republican form of government, shall protect each against invasion, and on the application of the Legislature, or of the Executive of a State when the Legislature cannot be convened, protect it from domestic violence.

The first amendments which were deemed necessary to the Constitution after its formation were proposed almost immediately after its adoption, and were rather in the nature of after-thoughts better to protect the rights of individual liberty. The first article of the amendments provides that Congress shall make no law respecting the establishing of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances. The second article provides that a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. The third, that no soldier shall in time of peace be quartered at any house without the consent of the owner, and

in time of war, but in a manner to be prescribed by law. The fourth, that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and that no warrants shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized. The fifth, that no person shall be held to answer for a capital or otherwise infamous crime unless upon a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, of the militia when in actual service in time of war, or public danger; and that no person shall, for the same offense, be put twice in jeopardy of life or limb, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, and that private property shall not be taken for public use without just compensation. The sixth is to the effect that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be con-

fronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. The seventh, that in all suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. The eighth is to the effect that excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. The ninth, to prevent any misconstruction by the courts, that rights not specially reserved by the people are therefore withheld from arbitrary power, specifically says that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. The tenth, that powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively or to the people. The eleventh was proposed in September, 1794, by Congress, and was ratified in January, 1798, and is to the effect that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. The force and effect of the twelfth amendment, which was adopted in 1804, in rela-

tion to the election of the President of the United States, will be considered in connection with the creation and powers of the Executive department of the government. The thirteenth, fourteenth and fifteenth amendments were the result of the Civil War, 1861–1865. Their declared object, purpose and meaning were forever to abolish the system of slavery or domestic servitude, and to prevent thereafter all class distinctions or inequalities before the law arising from color, race, or previous condition of servitude. A stringent provision was made to prevent persons from holding office who had been in office and had taken an oath to support the Constitution of the United States prior to the rebellion, but who, notwithstanding such oath, were engaged subsequent thereto in insurrection or rebellion. It was provided, however, that Congress, by a vote of two-thirds of each House, might remove such disability. A provision was made to prevent the validity of the public debt of the United States from being questioned, and to prevent the United States, or any State, from assuming any debt or obligation incurred in aid of insurrection or rebellion against the United States, or recognizing any claim for the loss or emancipation of any slave, and that all such debts and obligations and claims shall be held illegal and void. The representative

system, by representation of majorities only in geographically defined districts, was adopted as the cardinal and underlying principle upon which was to be created the law-making power under the Constitution of the United States, and of the several States. Wherever Congress is required to act, or the people of the several States are required to act, through their Legislatures, the intent is that such congressional action or legislative action shall be performed by a mere majority, unless otherwise declared.

In considering also the provisions of the Constitution, it must be borne in mind that they are largely the result of compromise. The jealousy of the States of each other was the cause of the threatened dissolution of the Confederacy under the system of government which prevailed in the United States of America from the close of the war in 1783 until 1789, the year of the adoption of the Constitution of the United States.

When, in consequence of the pressure that arose from the evident inadequacy of the Articles of Confederation to create a permanent form of government, the people of the United States called a convention to consider provisions for the formation of a more perfect union, the members of the convention were, more or less, under the influence of this local jealousy, and the organization of

the Senate, giving to each State two members, independent of the numbers, wealth, or position of the State, was intended to placate the smaller States and to make them feel that, although under a system of representation dependent upon numerical strength they would lose power in the lower House, they would still, by the veto power that the upper House had over the legislation of the lower, preserve their dignity as States and prevent the possibility of the passage of laws detrimental to their interests. Thus, it happens, for instance, that the new State of Colorado, although having two Senators, has but one Representative, its numerical strength being just sufficient for a single Representative in the House of Representatives; yet its admission as a State entitles it to equal position in the Senate with the State of New York with its five millions of inhabitants.

From an early period in the history of the United States, down to the commencement of the Civil War, the general theory was hotly disputed whether the Constitution of the United States was a compact between the several States, or was a framework of government which did not admit of the idea of compact. On the one hand it was contended that, as there is no common umpire or tribunal authorized to decide as a last resort upon

the powers and interpretation of the Constitution, each State had a right to construe the compact for itself. Such was the resolution of Virginia as early as 1829 ; such was the resolution of South Carolina when it attempted to nullify the tariff legislation of the United States in 1831. But this theory is refuted by the very wording of the Constitution itself, which says that it is ordained and established by the people of the United States to create a more perfect union ; and, as all the States were parties to it, no one State could construe it against the rights of the other States. Such an interpretation is against the theory of government itself, which prohibits any State which has once delegated its powers to a sovereign, from reasserting such power, without the consent of such sovereign ; and leads to the absurdity of claiming the possibility of carrying on a government which would give to each member thereof the right to deny the very existence of the government itself whenever it feels the pressure of the governmental hand.

On all constitutional questions the Constitution appointed a tribunal which was to expound its provisions, and, therefore, no province was left to the Legislatures or courts of the several States to determine the limit of the United States Government. The Supreme Court of the United States was the

final interpreter of all the powers conferred upon the general government. The Civil War of 1861-1865 originating from the desire of the Southern States to preserve slavery, uninterfered with by the sentiments of the Northern States, and to maintain the doctrine of State rights, resulting disastrously to the South, took that branch of constitutional controversy out of American politics. By the amendments since 1865 the political fact has been established that the United States Government is indissoluble, and that the Constitution created not a partnership between the States, but a form of government for the States, from which such States could not withdraw; and that, instead of remitting questions between the States to the arbitrament of the sword, they had to find peaceful solution after argument before the Supreme Court of the United States, or by amendment of the Constitution itself.

The fourteenth amendment will operate to prevent unequal taxation within the States. Heretofore there was no limitation upon States (except in so far as the State Constitutions may have prevented them) as to acts of confiscation under the guise of tax laws ; but this amendment, by securing equal protection of the laws, sets a limit, which has just been recognized by the Circuit Court of the United States, to spoliation under the forms of taxation.

CHAPTER II.

THE LEGISLATIVE DEPARTMENT.

WE have thus far, in our examination of the provisions of the Constitution of the United States, shown that the reason why the Articles of Confederation failed to accomplish their purpose to create a nation, was because the national authority, as created by such Articles, was stripped of the element of sanction. There was, in the first place, no supreme executive power; in the second place, the Federal Congress had simply power, until the adoption of the Constitution of 1789, to pass laws without enforcing them, and they were therefore in the nature of mere recommendations. The clear and unequivocal surrender of power on the part of the States of certain well-defined governmental functions to the national government, and the general transfer of power involved in that grant of the Constitution which says "that all legislative power by the Constitution granted shall be vested in a Congress of the United States which shall con-

sist of a Senate and House of Representatives," as interpreted by the Supreme Court of the United States, gives to the national Legislature power to pass laws on all subjects of which the United States has jurisdiction either by direct grant or by implication.

The House of Representatives is composed of members chosen every second year by the people of the several States, and the qualifications requisite for electors are the same as those which the State constitutions require for electors of members in the same branch of the respective State Legislatures. The qualifications of representatives are that each representative shall have attained the age of twenty-five years, that he shall have been seven years a citizen of the United States ; and that he be an inhabitant of the State in which he shall be chosen. Under the Constitution of 1789 the representatives as well as direct taxes were apportioned among the several States according to the number of their inhabitants, which included all free persons and those bound to service for a term of years ; three-fifths of all other persons, which of course meant slaves, and excluded Indians not taxed. The first enumeration after the adoption of the Constitution was to be made within three years after the first meeting of the Congress, and thereafter every ten years. The number of representatives then fixed was

to be one for every thirty thousand, but each State was to have at least one representative. This provision was subsequently changed by the fourteenth amendment, to the requirement that the representatives should be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed ; and that when the right to vote at any election for the choice of electors for President and Vice-President of the United States, of Representatives in Congress, of the Executive and Judicial officers of a State, or members of the Legislature thereof, is denied to any one of the male inhabitants of such State, being twenty-one years of age and a citizen of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of male citizens shall bear to the whole number of such male citizens twenty-one years of age in such State. The object of this amendment, which was adopted in 1866, was to prevent the slave States, which theretofore had been in rebellion, from abridging or limiting the right of suffrage on the part of the negroes for State offices, without incurring the penalty of diminishing thereby their representation in the House of Representatives of the

United States. Under the Constitution as it originally stood the States were at liberty to determine as they saw fit the manner in which these representatives were to be elected within the States, or Congress was at liberty to legislate upon the subject in furtherance of the constitutional provision as to representation.

Congress did from time to time apportion the number of representatives to each State in conformity with the census of each decade, so that in 1872, under the census of 1870, an apportionment was made by which the number of the members of the House of Representatives was fixed at 292. As the population of the United States from time to time increased, Congress likewise by law advanced the limitation of the number of persons who were entitled to single representatives, in order that the popular body should not become too numerous for purposes of deliberation ; so that under the census of 1870, by act of 1872, each 130,000 of the population is entitled to one representative. By the act of 1872 making such apportionment, following the preceding acts of apportionment, it is required that Representatives to Congress shall be elected by districts composed of contiguous territory, containing as nearly as practicable an equal number of inhabitants, and equal in

number to the number of representatives to which the State in which they lie may be entitled in Congress, no one district electing more than one representative. This is followed by a provision that as to the then immediately succeeding Congress the additional representatives to which each State should be entitled under the apportionment might, until otherwise provided for by the Legislature, be voted for upon a ticket at large. The only national requirement, therefore, as to election of representatives is, that they shall be elected by contiguous territories, one from each district. The manner in which the apportionment is to be made, the way in which districts are to be apportioned, the lines forming such districts, are all left to the legislative bodies of the several States. The apportionment act of 1872, which is the last apportionment act in force, provides the Tuesday after the first Monday in November of every second year as the day of election in all the States and Territories for representatives and delegates to the Congress of the fourth day of March next thereafter. The time for holding elections in any such district or territory for representative or delegate to fill the vacancy is prescribed by the laws of the several States and Territories. The vote for representatives is required under the provisions of Congress to be by

ballot. The compensation of members of Congress is \$5.000 a year, and an allowance for actual traveling expenses.

At the first session of Congress after every general election of representatives, the oath of office may be administered by any member of the House of Representatives to the Speaker, and by the Speaker to all the members and delegates present, and to the Clerk, previous to entering on any business, and to members and delegates as they afterward appear, previous to their taking their seats. Before the first meeting of each Congress the Clerk of the next preceding House of Representatives makes the roll of the representatives elected, placing thereon the names of those persons only whose credentials show that they were regularly elected, in accordance with the laws of the United States. The Sergeant-at-arms is charged with the duties of the Clerk in the event of any vacancy in that office, and in the event of the disability or absence of the Clerk; and in the event of the disability or absence of both Clerk and Sergeant-at-arms, the Door-keeper of the next preceding House of Representatives is charged with this duty. In the event of Congress being prevented, by a contagious disease or the existence of other circumstances,

making it, in the opinion of the President, hazardous to the lives of members to convene at the seat of government, he is authorized to convene them at such other place as he may judge proper.

The Senate is constituted of the senators elected by the Legislature of each State. The election takes place on the second Tuesday after the meeting and organization of the Legislature ; and if an election fails to be made on the first day, at least one vote is required to be taken every day thereafter, during the session of the Legislature, until a Senator is chosen. A vacancy existing at the beginning of the session is filled in the same manner, and if a vacancy occurs during the session it is also filled by election, the proceedings for which are to be commenced on the second Tuesday after the Legislature has organized and has notice of such vacancy. The number of senators is fixed at two from each State, independent and irrespective of the size of the State or the number of its inhabitants; so that there are several instances of States, notably Oregon and Delaware and Nevada, which have two senators and but one representative.

No person can be a senator who has not attained the age of thirty years, been nine years a citizen of the United States, and who shall not have

been, when elected, an inhabitant of the State from which he shall be chosen.

Senators are chosen for six years. They are divided into three classes, one class being chosen every second year. If vacancies happen, the Executive of a State may make a temporary appointment until the Legislature of the State can act.

The Vice-President of the United States is the President of the Senate, but without a vote, except in cases of equal division. The Senate chooses its other officers and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President.

The organization of the Senate is provided for by the act of June 1, 1789. The oath of office is administered by the President of the Senate to the senators elected previous to his taking his seat. When a President of the Senate has not taken the oath of office, it is administered to him by any member of the Senate.

Congress is the law-making power. One House contains the direct, immediate representatives of the people, the other the indirect representatives of the people; *i.e.*, the direct representatives of the States. Besides being part of the law-making power, the Senate shares with the President the power of appointment to office, of making treaties

of peace and declarations of war. Although Congress cannot be said to be superior to the co-ordinate Judicial and Executive departments of the Government, it nevertheless has, from the nature of its functions, the superior power. The history of the United States since 1865 gives several instances of the manner by which both the Judicial and Executive departments of the United States Government may, in cases of conflict, be coerced to a considerable degree by the law-making power. Notable instances of this coercion are the acts of Congress interfering with the Executive discretion of President Johnson when he was in direct conflict with the majority of both Houses of Congress, and his subsequent impeachment and all but conviction and removal; and the increase in the number of the judges of the Supreme Court of the United States, when a decision had been rendered upon a quasi-political subject—the constitutionality of the Legal Tender act, which did not conform to the opinions of the Executive and Legislative departments, and which was, therefore, to be re-argued and reversed, an increase of personnel of the court of last resort being the coercive method found effective to secure such a result.

Among the formalities of the organization of Congress, not heretofore referred to, are constitu-

tional provisions to the effect that Congress shall assemble at least once in every year, and that the meeting shall commence on the first Monday in December, unless by law a different day be appointed. Each House is made the judge of the elections, return, and qualifications of its own members. A majority is constituted a quorum for the transaction of business, but power is given to a smaller number to adjourn from day to day and to compel the attendance of absent members. Congress is empowered to make rules for its own government, and each House makes its own rules. The expulsion of a member is given to two-thirds of either House. Neither House has the power during the session to adjourn, without the consent of the other House, for more than three days, nor to any other place than the one appointed by law. No senator or representative is permitted, during the term for which he is elected, to be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such term of service, and no person holding any office under the United States shall be a member of either House during his continuance in office.

All revenue laws must originate in the House of Representatives. This includes all appropriation

bills, but the Senate is permitted to propose or concur with amendments in the same manner as on other bills. Power is given to Congress to levy and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense and general welfare of the United States; but such duties, imposts, and excises must be uniform throughout the United States. We have already referred to the fact that the absence of such a power given in express terms, or even by necessary implication, and the absence of any power to enforce a system of taxation, was the main cause of the failure of the United States to form a stable government under the Articles of Confederation.

In many forms has the question of the constitutional exercise of this power been before the Supreme Court of the United States. The result of these decisions may be summed up as follows: Congress has power to levy such taxes and imposts as it may see fit for public purposes. It was claimed that customs duties levied with the ulterior purpose of protecting home industry, were an unconstitutional exercise of power under this grant, for the reason that such duties are not levied with the view to the raising of revenue, but, on the contrary, for the purpose of enabling manufacturers within the United States to increase profits on

products for the benefit of their private operations. It was held by the Supreme Court of the United States, that if any revenue whatever was raised from this source, the motive could not be inquired into, and that the indirect benefit to classes in the community of this mode of raising revenue was one of the consequences which did not come within judicial cognizance. It was held, however, by the Supreme Court of the United States in the case of *Loan Association against Topeka*, 20 Wallace, 655, that where, however, the tax is avowedly laid for a private purpose, it is illegal and void. In this case the tax, having been avowedly laid to aid a private corporation in creating a manufacturing establishment, was held to be an illegal exercise of the taxing power. This case has been followed in several of the States, and creates a line of cases which in time, as public opinion in the United States may be ripened and educated by politico-economical studies, may lead to a reversal by the Supreme Court of the United States of its opinion that taxation for incidental protection under the guise of revenue laws is a constitutional exercise of power. Thus may possibly be given to the United States the full benefit of free-trade doctrines through an interpretation by the Supreme Court of the United States, namely, that all customs duties must be

levied for purposes of revenue only, and that if it appears to the court that the object is not one of revenue, but the incidental benefit of persons or classes in the community, it is unequal taxation; is a burden laid not for purposes of government, but for private purposes, and is, therefore, unconstitutional and void.

Where Congress has the power to tax, the States are prohibited from exercising the same power, under the general exposition that what is granted to the government of the United States is taken away from the several States; and when Congress exempts from taxation in express terms, the States are *ipso facto* inhibited from imposing taxation upon the same commodity or asset. For instance, the bonds of the United States are, by the contract of the bondholder with the federal government, incorporated into the law creating the bonds, exempted from taxation. Under those circumstances it would be an illegal exercise of power on the part of the States or municipalities to tax such bonds.

In a leading case decided by the Supreme Court of the United States it was fully recognized that the power to tax involved the power to destroy. As the Union and the State governments are coördinate branches of the polity of the United States, and as to tax the State governments or the muni-

cipalities created thereunder, would involve the power to destroy the States or such municipalities, Congress is by the very nature of such institutions inhibited from levying any such tax. Congress, therefore, cannot tax the salaries of State officers, franchises created by a State, municipal corporation, of a State, processes of State courts, etc.

Congress is empowered to borrow money on the credit of the United States. The meaning of this clause is too clear to require judicial interpretation, and gives constitutional sanction to the funded debt of the United States. Congress is authorized to regulate commerce with foreign nations, and among the several States, and with the Indian tribes. This power to regulate commerce with foreign nations involves, of course, the treaty-making power; to make such arrangements in relation to the commerce, resting on mutual comity, as exigencies may from time to time demand. The power to regulate commerce between the several States involves, of course, the power to regulate commerce on the navigable rivers and streams which run between the several States. And more recently, in consequence of the growth of inter state traffic and the establishment of railways which run through many States, and of telegraphic lines which spread their net-work over the whole of the domain of the

United States, this power has been invoked by the people of the United States as a means of asserting uniform jurisdiction over corporate franchises coëxcessive in their exercise with the United States of America, although chartered under the several State laws.

The question of railway and telegraph monopoly has in recent years become much agitated in the United States, in consequence of the rapid growth of those several interests. The power of the National Congress to regulate such enterprises organized under State corporate franchises, but really carrying on inter-state commerce, has been recognized by the Supreme Court of the United States. Although ordinarily the safer course of legislation is toward decentralization of power, it is nevertheless true that in the case of industrial enterprises having a tendency to centralization within the area of the vast territory of the United States, the governmental power to regulate these enterprises, if they partake in the least of a monopoly character, must be equally coëxcessive with the territory they occupy. As the several States have shown themselves powerless to deal with the subject either in an efficient way or upon a uniform plan, the power of the United States, now placed beyond question by the decisions of the

Supreme Court of the United States, to regulate these gigantic industrial enterprises is well lodged in Congress.

Power is given to the Congress of the United States to establish a uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the United States. The grant of this power of naturalization has been followed by national legislation from time to time, by which persons who are residents of the United States for five years can become citizens thereof by following certain prescribed forms of identification, declaration of intentions, etc. Exceptions of an unimportant character are made in cases of minors.

The bankruptcy legislation of the United States has been extremely spasmodic. When a bankruptcy law exists the States are prohibited, by necessary implication, from enforcing insolvency laws in conflict with the bankruptcy laws. When the bankruptcy laws are repealed, as they frequently have been and as is the case at present, the State insolvent laws once more come into force. While the federal bankruptcy laws are on the statute book and in force, all State insolvent laws, if inconsistent, are for the time being superseded.

Congress is empowered to coin money and to regulate the value thereof and of foreign coin, and

fix a standard of weights and measures. Under this grant of power, the right of the issue of the United States Treasury notes made legal tender at the beginning of the Civil War was seriously contested. At first a decision was had, under the presiding justiceship of Mr. Chase, who was Secretary of the Treasury when such notes were issued, declaring such issue to be in contravention of the Constitution of the United States. This decision was subsequently reversed by a court which had in the interim become enlarged, and it was held that this issue of legal tender notes, made during the war, though not justified strictly under the power granted, was the exercise of a war power, and was naturally limited to a condition either of domestic insurrection or foreign invasion. While this decision stands, there is no cause to apprehend that under the power to coin money and to regulate its value, any addition will be made to the legal tender issue of the United States.

Congress is empowered to provide for the punishment of counterfeiting securities and current coin of the United States; to establish post-offices and post roads; promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. Under this power the

Patent Office was organized, and patent, trade mark, and copy-right laws passed, securing for limited periods of time the rights of inventors and authors in their respective inventions and books.

Congress is empowered also to constitute tribunals inferior to the Supreme Court. In the third article creating the judicial power of the United States, such power is vested in the Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. This article further provides that the judges, both of the Supreme and inferior courts, shall hold their office during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office. Under these two several sections of the Constitution of the United States, Congress, from 1789 to 1876, from time to time, passed judiciary laws under which district courts were organized, which give to each State, substantially, one district judge (to Pennsylvania, however, two, to New York two, to Ohio two, to Illinois two), and circuit courts of nine circuits with one judge for each circuit. The judges of the Supreme Court of the United States when not sitting in banc likewise hold circuit courts. The Judicial department of the United States being created under a separate article

of the Constitution, we will reserve our further examination into the organization of these courts and their jurisdiction until we reach that head.

Congress has exclusive jurisdiction in defining and punishing felonies committed on the high seas, and offenses against the law of nations; to declare war, and grant letters of marque and reprisal, and to make rules concerning captures on land and water; to raise and support armies, but no appropriation of money to that end shall be for a longer term than two years; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia for executing the laws of the Union; to suppress insurrections and repel invasions; to provide for organizing the army and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress. Under the power to make rules for the government of the land and naval forces, Congress has not the power to make any rules inconsistent with the position of the President of the United States as Commander-in-chief. The Constitution

appoints him the first officer of the army, and the laws of war give to the first officer powers, of which, under the guise of rules and regulations, he cannot be stripped. The manner in which the President makes his requisition for militia is by a call upon the Executive of a State, but he is not required to recognize the chief Executive of a State; he can make his call directly upon the militia officers. Although the States have the power to appoint officers for the militia, they are all outranked by the Commander-in-chief, when called by him to the service of the United States, and outranked by any general or other officer who may be appointed over them.

The object in providing that no appropriation of money for army purposes shall be for a longer period than two years, is obviously that no Congress subservient to the Executive power shall create a standing army to be placed under the control of the chief Executive of the Union and make permanent provision therefor. The necessity to ask from time to time the popular consent for army appropriations through the instrumentality of Congress, will, it is supposed, forever prevent an army being created which shall be used in a manner opposed to the popular will.

Congress has power to exercise exclusive legisla-

tion in all cases whatsoever over such district, not exceeding ten miles square, as may, by a cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. Under this section of the Constitution the District of Columbia was ceded by the State of Maryland to the United States for the establishment of the seat of government at Washington on the Potomac, and Congress has exclusive jurisdiction over the government in that district. It provided the district with a municipal administration, which, however, in consequence of the abuses incident thereto, was abolished, and it is now governed directly by a committee of Congress.

Crimes committed within a fort, magazine, arsenal, or dock-yard, or other building of the United States, are cognizable only in the United States courts within their respective districts.

Congress is empowered to declare the punishment of treason, but no attainer of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Congress is further empowered to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof.

Although under this general grant of all power necessary to carry into execution the powers specifically enumerated, no new power has been granted, such a clause was, nevertheless, necessary for the purpose of preventing captious objections to the exercise of power by necessary implication arising from powers already granted, simply because such powers were not expressed in set terms. Under this grant of implied powers, it was held that Congress could charter a national bank, and that it could make appropriations for internal improvements. Under this grant of implied power, it was held by the Supreme Court of the United States that Congress might organize a form of State government for the States which were in insurrection, and which immediately after the Civil War for the time being had thereby lost their framework of government.

Shortly after the adoption of the Constitution, by reason of the serious controversy which was then threatening war with France, the so-called

Alien and Sedition laws were passed, by the first of which the President of the United States was empowered to order any aliens out of the country whose presence was supposed to be dangerous to the community, and this in time of peace. The Sedition laws made it a crime for persons unlawfully to combine or conspire together with the intent to oppose any measure or measures of the United States, etc., or to write, print, utter, or publish, or cause or procure to be written, etc., any false, scandalous and malicious articles against the government of the United States, or either House of Congress, so as to stir up sedition, etc. These laws, although upheld by the judiciary, were so obnoxious to many of the States of the Union that their presence upon the statute book resulted in the passage of resolutions by the Legislatures of several States—Virginia and Kentucky—by which they nullified such laws within their own States. Rather than force a conflict upon this point, the laws were repealed.

Under the ninth section of the first article of the Constitution, restricting the powers of Congress and of the States, it is provided that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the

year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. This was an awkward and obscure provision, adopted to prohibit Congress from preventing the importation of slaves until 1808. In that respect it resembles the provision requiring the States to surrender fugitives who were held to service in other States. The framers of the Constitution were evidently extremely unwilling to use the term slave in the instrument, and so in several instances resorted to a paraphrase.

Congress was forbidden to suspend the writ of habeas corpus, except when, in case of rebellion or invasion, the public safety may require it. It has, however, been expressly held by the Supreme Court of the United States that the power to suspend the writ of habeas corpus exists only in the case of war or insurrection as to the district which is the theatre of war or insurrection, and not where the civil tribunals exercise full and undisputed authority.

Congress is forbidden to pass any bill of attainder or *ex post facto* law. Although there is secured to each man accused of a crime the right to be confronted by his accusers, and to a trial by a jury, which would seem necessarily to forbid the passage of any bill of attainder, yet, to place the rights

of the people beyond doubt, it was deemed expedient to put in express terms that no man shall be convicted by bill, and that no man shall be convicted of a criminal offense under a law passed subsequent to the committing of the act. Under this prohibition as to the passage of *ex post facto* laws, it has, however, been held that this does not forbid Congress from passing retroactive laws in civil matters.

No capitation or other direct tax is permitted to be laid unless in proportion to the decennial census or enumeration. No tax or duty shall be laid on articles exported from any State. Under this clause of the Constitution, it was held by the Supreme Court of the United States that the export duty on cotton, levied after the close of the Civil War, was unconstitutionally levied.

No preference is permitted to be given by any regulation of commerce or revenue to the ports of one State over those of another; nor are vessels bound to or from one State obliged to enter, clear, or pay duties in another. No money is permitted to be drawn from the Treasury except in consequence of appropriations made by law, and a regular statement of account of the receipts and expenditures of all public money is required to be published from time to time.

No title of nobility is permitted to be granted by the United States, and no person holding any office of profit or trust under its laws is allowed, without the consent of Congress, to accept any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state. No State is permitted to enter into any treaty, alliance, or confederation ; to grant letters of marque or reprisal, coin money or emit bills of credit, or make anything but gold and silver coin a tender in payment of debts ; nor to pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Under these restrictions upon the powers of the States, the question which has been most frequently before the Supreme Court of the United States for interpretation has been, “What is a law impairing the obligation of contracts, and what contracts are under the protection of the Constitution of the United States ?” While it is true that no one Legislature can tie the hands of a subsequent Legislature in matters strictly governmental, nevertheless the Legislature of a State may pass a law which constitutes a contract with individuals or corporations binding upon the State. Such a law cannot be subsequently impaired, changed or modified to the detriment of the other contracting party

without the consent of such contracting party or its assigns. Under this head it has been held by the Supreme Court of the United States, that the State, as to a particular property, may forever surrender its taxing power. In a leading case, decided as early as 1819, known as the Dartmouth College case, it was held that the charter granted by a State to a college was a contract which the Constitution of the United States would not permit to be impaired.

As the result of this decision restricting the powers of States to alter and modify franchises granted by them, the States hastened to alter their respective Constitutions, so that it was thenceforth provided that all grants to corporations and all charters of corporations were subject to modification, alteration, and repeal at the will of the Legislature. This made the right of the Legislature to alter, modify, or repeal franchises granted to corporations, a part of the contract originally entered into with the corporation, and therefore the exercise of that right, however detrimental to the interests of the corporation, could not be said to be an impairment of the obligation of the contract embodied in its charter enacted subsequently to such constitutional amendment. When some of the Western States of the United States recently enacted laws by virtue

of which commissioners were appointed to regulate the tariff of charges for freight and passengers to be charged by the railway corporations which had been chartered within the State, it was argued before the Supreme Court of the United States, by the bondholders and stockholders of the corporation, that such legislation was an impairment of the original contract made with the corporation, and that under such contract the bondholders and stockholders acquired rights which could not be subsequently destroyed by a reassertion of sovereign power on the part of the State, which had been impliedly bargained away. In those States, however, the constitutions provided that grants by the Legislature of corporate franchises were subject to modification and repeal, and the Supreme Court held that the bond and stock holders were without remedy. It has also been held that the remedial provisions of law by which the creditor could collect from his debtor within the respective States by judgment and execution a claim due him, could not be so altered as substantially to impair his rights ; that the remedial legislation of the State under which contracts are made form part of the contract, and that to alter them to the detriment of the creditor was an impairment of his rights. On the other hand, it has been held by the

Supreme Court of the United States, in construing this provision of the Constitution, that a municipal corporation, being a subordinate branch of the sovereignty of the State, having delegated powers only, is subject to have its charter modified, altered or repealed at the will of the Legislature, and that such legislation never partakes of the nature of a contract. This is likewise true of all officers of the States whose salaries are fixed by the State, and whose functions are prescribed by State laws.

It has also been held that a State cannot by contract bargain away the essential powers of sovereignty. The State, therefore, cannot deprive itself of the right to appropriate private property to public use under the power of eminent domain.

Even exclusive privileges in the nature of legislative contracts are upheld. If the State, for instance, grants a privilege to a corporation to build a bridge, and couples such grant with an agreement not to charter a bridge within a certain given point, the State is held to such a contract after the bridge is built. On the other hand, whatever may appropriately be deemed to fall within police powers cannot be contracted away. A man who buys a large stock of liquors under existing laws by which no license is required, cannot claim as against the State that his contract

is impaired because the State subsequently either restricts the sale or imposes conditions upon the business in which he is engaged.

No State is permitted, without the consent of Congress, to lay any imposts or duties on imports or exports except such as may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of Congress.

No State is permitted, without the consent of Congress, to lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or contract with another State or with a foreign power, or to engage in war unless actually invaded or in such imminent danger as will not admit of delay.

Under these provisions it has been held that an immigrant tax imposed by State law upon vessels entering the port of New York, of one dollar per head, collected from ships which brought the emigrants, and the purpose and object of the expenditure of which head-money was undoubtedly of an extremely useful character to both emigrants and ship owners, was an unconsti-

tutional impost. The Emigration Commission, which for many years in the City of New York performed a very praiseworthy function in protecting the emigrants, from the moment of their landing until their departure from the City of New York, from frauds and swindles of every description which had theretofore been practiced upon them, providing hospitable accommodations for them, and for a year after their landing exercising some degree of guardianship in relation to their affairs, had its usefulness, after thirty years' duration, suddenly endangered by a decision of the Supreme Court of the United States adverse to the levy of the fund which supported it.

Full faith and credit is required to be given in each State to the public acts, records, and judicial proceedings of every other State, and Congress is required by general laws to prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof. Under this section exemplification acts exist under which the acts and records of the several States are made evidence in the courts of law of other States.

The citizens of each State are, under the Constitution, entitled to all the privileges and immunities of citizens in the several States. Under this clause special license laws, by which citizens of one State

were prohibited from seeking trade in other States except on taking out licenses which were not required to be taken out by the citizens of the State, were held to be unconstitutional. In some of the courts of the United States, however, it has been held that by the term citizens of each State who are entitled to such protection is meant natural citizens, and not artificial creations like corporations, and that, therefore, a State is at liberty to impose terms upon corporations of other States as a condition of their doing business therein which they do not impose upon their own corporations.

A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime. This creates without treaty between the States a provision for extradition by which all criminals are delivered by one State to another, so that such criminals can be tried within the State where the crime has been committed.

The constitutional provision that no person held to service or labor in one State under the laws thereof, escaping into another, shall, in con-

sequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due, was mainly applicable to a condition of slavery, now happily passed away, when negro bondmen escaped from the Southern to the Northern States, and is now applicable only to cases of apprenticeship, for which it is not likely to be invoked.

The United States is required to guarantee to every State in the Union a republican form of government, and to protect each of them against invasion, and on application of the Legislature, or of the Executive when the Legislature cannot be convened, against domestic violence.

The provision requiring that full faith and credit shall be given in each State to the acts, etc., of every other State has for its object to prevent any such weakening of the bonds of the Federal Union as might follow from the States disregarding what was due to courtesy and comity when their respective proceedings should come under consideration, and thus opening anew the controversies and questions which, in the jurisdiction having properly and primarily the control of them, had once been determined. This clause relates only to judgments in civil actions, and not to judgments on criminal

prosecutions. In the latter respect the relation of the States to each other is wholly unaffected by the Constitution.

The clause giving to the citizens of each State all the privileges and immunities of citizens in the several States, was not intended to give the laws in one State the slightest force in another State. It simply secures to the citizens of each State in every other State, not the laws or peculiar privileges which they may be entitled to in their own State, but such protection and benefit of the laws of every and any other State as are common to the citizens thereof in virtue of their being citizens.

Under the section making it imperative upon the United States to guarantee to every State in the Union a republican form of government, a question was raised by the friends of woman's suffrage, before the Supreme Court of the United States, whether a government that excluded women from the suffrage was a republic, and the court held that it was.

When the senators and representatives of a State are admitted to the council of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority.

Congress has power to dispose of and make all

needful rules and regulations respecting the territory or other property belonging to the United States. Under this grant of power it has been held that Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring the public domain, or any part of it, and to designate the persons to whom the transfer shall be made; that no State legislation can interfere with this right, or embarrass this exercise, and that no State law, whether by limitation or otherwise, can defeat the title of the United States to public lands within the limits of the State.

By the sixth article of the Constitution, it is provided that all debts contracted and engagements entered into before the adoption of the Constitution shall be as valid against the United States under the Constitution as under the Confederation.

The second section provides that the Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. This supremacy gives to the United States Government, as contradistinguished from a State Govern-

ment, its true sovereignty. Without it the Union could not maintain itself. There would have been a constant clashing of interests and of laws, and endless interpretations by the several State courts conflicting with each other as to the meaning of clauses of the Constitution of the United States. The declaration of supremacy of the Constitution of the United States and the laws thereunder, and the organization of the Supreme Court of the United States to determine all questions arising under the Constitution of the United States, or under a United States law, or when the Constitution of the United States, or the United States statutes are invoked or called into question, has created a homogeneity of decisions and interpretation which gives stability to and respect for its laws.

A treaty is regarded as equivalent to an act of Congress, and has precisely the same validity. Congress has, therefore, the power by a subsequent law to repeal clauses in a treaty if the subsequent enactments are in necessary conflict with the treaty. It is only the foreign governments, the compact with which has been violated, which have a ground of complaint for an infraction of the treaty, not the citizens of the United States.

Although the Constitution thus places the United States government and its legislation above that

of States, it nevertheless takes from the States their power to legislate in but three cases. First, where they are expressly prohibited from legislation; second, where exclusive power is expressly vested in the United States; and third, where power vested in the United States is in its nature exclusive.

It has now been expressly held by the Supreme Court of the United States, that when a State becomes one of the United States, it enters into an indissoluble relation. The act which consummates its admission into the Union is something more than a compact; it is the incorporation of a new member into the political body; it is final. The union is as complete, as perpetual, and as indissoluble as the union between the original States.

The senators and representatives, and the members of the several State Legislatures, and all Executive and Judicial officers both of the United States and of the several States, are required by the Constitution to be bound by an oath or affirmation to support the Constitution; but no religious test is ever required as a qualification for any office or public trust under the United States. Shortly after the war of the rebellion a new oath was prescribed by Congress to all office-holders, known as the "iron-clad" oath, by which the

officer swore that he had not aided or abetted the rebellion in any form or manner, and abjured the heresy of secession. This oath was, after solemn argument, declared to be an unconstitutional imposition as a test for office, as the Constitution required nothing further than an oath to support the Constitution.

Shortly after the adoption of the Constitution, amendments were proposed, and by the States in due form ratified, which limited the powers of Congress, and the first eleven of which were in their nature a sort of Declaration of Rights of the people against arbitrary interference by the federal authority, and have hereinbefore been commented upon.

CHAPTER III.

THE EXECUTIVE POWER.

THE Executive power of the Federal Government under the Constitution of the United States is vested in a President, who is to hold his office for the period of four years, and who, together with the Vice-President chosen for the same term, is elected by an Electoral College composed of electors of each State equal to the whole number of senators and representatives to which the State is at the time of such election entitled in Congress. The manner of the election of the members of the Electoral College is determinable by the Legislatures of the several States, with the limitation only that no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. Under the Constitution, Congress was vested with power to determine the time of choosing the electors and the day on which they shall give their votes; such day, however, to be the same throughout the United

States. By an amendment to the Constitution, adopted in September, 1804, these electors were constituted into electoral colleges, to meet not as one body, but in their respective States, and to vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves. The ballots for President shall be separate from those for Vice-President, and after having made distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the numbers of votes for each, the lists are required to be signed and certified and transmitted sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate then shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed. If no person have such majority, then from the persons having the highest number of votes, not exceeding three, on the list thus voted for as President, the House of Representatives shall immediately choose by ballot the President. When that contingency arises the members of the House of

Representatives cease to vote in their individual capacity, but vote by States, each delegation or a majority of each delegation, casting the vote of the State. For this purpose the quorum to constitute the House of Representatives must consist of a member or members from two-thirds of the States, and a majority of all the States is necessary to a choice.

In the event of the House of Representatives failing to choose a President, when the right of choice thus devolves upon them, before the fourth day of March next following the election, then the Vice-President, elected as hereinafter stated, shall act as President, as in case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors. If no person has a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President. A quorum for this purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. No person is eligible for the position of President unless he be a natural-born citizen or a citizen of the United States at the time of the adoption of

the Constitution. He must be at least thirty-five years of age, and have been fourteen years a resident within the United States.

The difference between the amendment and the Constitution as it originally stood, lies mainly in the fact that under the original Constitution the electors voted by ballot for two persons, and that they made a list of all the persons voted for and the number of votes for each, and the person having the highest number of votes, if such number was a majority of the whole number, became the President, and the next person having the highest number of votes became the Vice-President. The idea which the framers of the Constitution entertained as to the manner in which these electoral colleges should exercise their function was that the people of each State would, in such manner as the Legislature directed, select the wisest and best men in the State to determine upon the fittest and best citizens for the offices of President and Vice-President respectively. Alexander Hamilton says in the *Federalist*, "It was desirable that the sense of the people should operate in the choice of the persons to whom so important a trust was to be confided. This end will be answered by committing the right of making it not to any preëstablished body, but to men chosen by the people for

the special purpose at a particular juncture. It was equally desirable that the immediate election should be made by men most capable of analyzing qualities adapted to the station. . . . A small number of persons selected by their fellow-citizens from the general mass would be most likely to possess the information and discernment necessary for so complicated an investigation."

The end which was intended to be achieved by preventing the merger of the State electors in any general body, was to preserve State action to such a degree as to prevent State jealousy in the selection of the President, so that each State should feel that in the performance of so important a task as the selection of a President of the United States it preserved its separate action ; secondly, by this system of double election to secure the best possible result as to persons to fill the important offices of President and Vice-President.

At a very early period after the adoption of the Constitution the practical result of this method of selection was the very opposite from that which was intended by the framers of that instrument. National conventions of parties predetermined who the nominees of the party should be for such offices, and the election of electors under the forms of the Constitution at a subsequent period was

merely a method whereby to test the party strength in the several States ; the electors to be voted for were likewise to be determined by a party convention within the State ; and the majority in any State would elect either Federal or Republican electors, subsequently Whig or Democratic, and at a still later period Republican or Democratic electors, by a majority vote which determined which party should prevail in each particular State. The electors so elected became and are mere registering machines to cast the vote of the party in conformity with the nomination of the party ; and so strong are party ties in the United States, that there is no instance of any elector so elected disregarding his obligation to his party and exercising an independent choice for President of the United States. Therefore, after the November election preceding the March when the President of the United States is to be inaugurated, and considerably preceding the period of the meeting of the electoral colleges, the selection of electors is deemed the conclusion of the contest, and when such electors are elected, who is to become the President and Vice-President of the United States is immediately thereupon declared and known. The subsequent meeting of the electoral colleges on the first Wednesday in December following the

Tuesday after the first Monday of November, when the election takes place, has degenerated into a mere matter of form, to which nobody pays anything more than a mere passing attention. The Revised Statutes of the United States, sections 132-151, provide a uniform time for the choice of the electors, their number, the manner for filling vacancies, the certificates for the electors, the manner of making their returns, their compensation, a provision for the contingency of a new election in the event of the Presidency and Vice-Presidency both becoming vacant, and a provision that, in the event of the resignation of the President or Vice-President, it shall be in writing.

The manner of counting the electoral vote has thus far been determined by joint resolution of the House of Representatives and the Senate.

Immediately after the election of 1876, a controversy arose as to whether Mr. Tilden or Mr. Hayes had a clear majority of the electoral vote, and when the electoral colleges subsequently met in their respective States, two returns came from several States, and by the counting of either one of those electoral returns, or the rejection of both, the result of the election would be changed. The country was considerably disturbed by the then condition of affairs; grave suspicions were enter-

tained that fraudulent electoral colleges were constituted by violently disregarding or rejecting votes which should properly have been registered for the successful candidate, and the country was supposed by many to be upon the eve of another civil strife as to the Presidential succession, when an extra-judicial tribunal was organized, known as the Electoral Commission, composed of five Judges of the Supreme Court of the United States, five members of the House, and five Senators, from both parties, fifteen in all, whose determination upon the question was accepted as final. It is well known, that by a majority of one vote Mr. Hayes was declared elected, and duly inaugurated. This condition of affairs is unlikely ever to happen again, because the semi-territorial government to which some of the States which theretofore had been in rebellion were subjected, created a condition of affairs in such States favorable to frauds in election returns, and which made it doubtful for a time whether the nominal State government was really representative of the people of the State, and the acts of the government officials were regarded with grave suspicion by both parties.

The Revised Statutes also provide that the time for which a President and Vice-President shall be elected shall in all cases commence on the fourth

day of March next succeeding the day on which the votes of the electors have been given, and that that term shall be four years; that the compensation of the President shall be \$50,000 a year, and that of the Vice-President \$10,000; the increase of the President's salary from the amount originally fixed by the act of 1793 at \$25,000, having been made in March 1873. It also contains a provision authorizing the appointment, and limits the expenditure of the President's official household.

The functions of the President are defined in the second article of the Constitution. He is made Commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he has power to grant reprieves and pardons for offenses against the United States except in cases of impeachment only, and authorize him to require the opinion in writing of the principal officers in each of the Executive departments upon any subject relating to the duties of their respective offices. Power is given him, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators concur; with him rests the nomination, and by and with the advice and consent of the Senate, the appointment of all ambassadors, all public minis-

ters and consuls. He also appoints, subject to confirmation by Senate, the Judges of the Supreme Court and all other officers of the United States the appointment of whom is not otherwise provided for in the Constitution, and which may subsequently be established by law. Power is, however, reserved to Congress by law to vest the appointment of such inferior officers as it may think proper in the President alone, in the courts of law, or in the heads of departments. The President is also empowered to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session. He is required from time to time to give to Congress information of the state of the Union and to recommend to its consideration such measures as he shall judge necessary and expedient, and he may on extraordinary occasions convene both Houses, or either of them, and in case of disagreement between them as to the time of adjournment he may adjourn them to such time as he may think proper. The President receives ambassadors, diplomatic agents and other public ministers, and is in general terms entrusted with the duty to see that the laws are faithfully executed and to grant commissions to all the officers of the United States. Provision is made for the removal of both the

President and Vice-President and all civil officers of the United States on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. He has also the high and important prerogative to veto all legislation of Congress, which veto power is, however, subjected to the condition that in the event of his failure to approve a bill he shall return it with his objection to the House in which it shall have originated, which shall enter the objection at large upon its journal and proceed to reconsider the bill. If, after such reconsideration, two-thirds of the House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law notwithstanding the Presidential veto. In all such cases the votes of the Houses are determined by yeas and nays, and the names of the persons voting for and against the bill are entered upon the journal of each House. Should the President fail to return the bill, or fail to sign it within ten days after it shall have been presented to him, it becomes a law as though he had signed it, unless Congress by adjournment prevents its return, in which case it does not become a law without the President's signature.

The power to make appointments to office by and with the advice and consent of the Senate has, in practice, also largely deviated from the intentions of the draftsmen of the Constitution. By giving the President this power, it was intended to place upon him the responsibility of the nomination, and to give the Senate the power to consider the fitness of the nomination by a canvass of the merits of the nominee, so as to act as a check upon the President's personal favoritism, nepotism, lack of information, or any other influence resulting in an injudicious nomination. When, however, by the growth of the population and the enormous increase of federal offices consequent upon such growth, it became practically impossible for the President to arrive at a judicious conclusion as to the vast number of appointments which had to be made with each change of administration: under the pernicious doctrine that the prevailing party had a right to all the federal offices, a habit at first grew up of asking the advice of the senators of the States in which the officers were to exercise their functions as to the proper nominee; and this habit in time grew into a custom, which gave to the senators, as they insisted, the right to suggest to the President the names of the persons who were to exercise federal functions

within the State from which they were commissioned. This became so established a rule of action on the part of the Presidents, that it became a matter of custom that when both senators of a State for which an appointment was made declined to confirm, the Senate deemed itself bound to reject the nomination. Therefore, during President Garfield's administration, the two senators from New York resigned their seats in 1881, because what was termed "the courtesy of the Senate" had been violated in their cases, and the Collector of the Port of New York had been nominated without consultation, and in disregard of their wishes. An active movement is now proceeding in the United States to institute some system of civil service reform which will relieve the President from the necessity of making nominations to the Senate of a vast number of officers who are periodically to be appointed under the "spoils" system. From the necessities of the situation the nominations of inefficient men by the President is inevitable if he acts entirely upon his own judgment, in disregard and without previous consultation with the senators from the States. It is clearly impossible for him to know much of the persons thus nominated. He is, therefore, dependent upon the senators of the several States for suggestion and advice as to the nominations, and this

dependence makes of the senators the heads of the great political machines of the States, and who thereby become, instead of the President, the fountains of federal honor and office within their respective States. The civil service reform movement, therefore, in the United States will, if successful, deal a blow at the "spoils" system, which makes each Presidential election a raffle for one hundred thousand offices, and the incumbents a vast horde of hungry office-holders, upon whom assessments for campaign funds can be levied by the party in power, which are promptly paid, because an incumbent knows full well that a refusal to contribute involves danger to him from his own party, and a change of administration bringing into power the opposition party, his office must, almost as a matter of course, be vacated. This reform is also an attack upon the "courtesy of the Senate," which constitutes senators, instead of mere judges of proper or improper nominations, a cabal to dictate nominations to the President, and in the event of a Presidential refusal, to decline confirmation, irrespective of the merits of the nominees.

Each term of the Presidential office begins on the fourth day of March succeeding the election, and continues for a period of four years. The people of

the United States are at liberty to reëlect the incumbent if they see fit: there is no constitutional restriction upon them in regard to the number of times he may be reëlected. But as Washington declined a nomination after his second term had expired, and pointed out, in so declining, the impropriety of repeated elections of the same officer, however popular, it has become part of the unwritten law of the United States that the Presidential term should not be extended beyond eight years.

In case of the removal of the President from office, or of his death, resignation or inability to discharge its powers and duties, it is provided that the same shall devolve upon the Vice-President. And it is further provided that Congress may by law provide for the case of the removal, death, resignation or inability of both President and Vice-President, and declare what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President be elected. Congress did provide, that in such a case the President of the Senate, or, if there be none, the Speaker of the House of Representatives for the time being, shall act as President until the disability is removed or a President elected ; and in the event

of the office of both President and Vice-President becoming vacant, the Secretary of State shall thereupon cause a notification to be made to the Executive of every State, and a new election shall thereupon be ordered.

There is no provision for succession, in the event of there being no President of the Senate and no Speaker of the House of Representatives. The death of President Garfield, at a time when there was neither President of the Senate nor Speaker of the House of Representatives, created a case when, in the event of the death of President Arthur before the Senate could be convened, no succession for the Presidency had been provided for. It is therefore clear that a further provision must be made by law for such a possible contingency.

Another question which arose during the prolonged disability of President Garfield, intermediate between his wounding and his death, is one which has never yet received complete and satisfactory solution, and may create trouble unless anticipated by law. The Constitution provides that, in the event of a Presidential disability, the office of President shall devolve upon the Vice-President; but there is no provision that such a devolution of the office

shall be simply temporary in character, and that the Vice-President shall resign the same when the disability ceases to exist. The great personal popularity of President Garfield, the hope of speedy recovery from his disability, and the widespread sympathy for his condition, made it inexpedient for the Vice-President to claim the office of President during this inability of the President to perform the duties of his office. But had the Vice-Presidency then been held by a person of less delicacy of sentiment and appreciation of popular opinion, the questions of who should determine when an inability arises, and for what term the Vice-President should hold office in the event of the disability being removed, might have become very serious ones. These recent events, therefore, point to some further amendments of the Revised Statutes in relation to the Presidential office.

The President is not subject in the exercise of his discretion to any judicial interference. The Supreme Court of the United States cannot compel his signature to any act, nor cause him to refrain from doing any act. There is but one way to reach an abuse of his authority, and that is by impeachment. There is but one example in the history of the United States of an impeachment of

* the President, and that is the impeachment of Andrew Johnson.

The House has the sole power of impeachment. The Senate has the sole power to try impeachments. When sitting for that purpose, they are on oath or affirmation. When the President of the United States is tried the Chief Justice of the United States presides, and no conviction can be had without the concurrence of two-thirds of the members present. The English precedents are followed in the trial by impeachment, of the House appointing triers, and the impeached officer having counsel, either assigned to him or appointed by him, to try the cause in his behalf.

Until 1868 the President had the power to create vacancies in the offices of heads of departments and their first assistants, by demanding resignations and filling vacancies temporarily until the Senate's consent could be obtained. In consequence of the conflict which then existed between the Legislative and Executive departments, eventually resulting in the impeachment of President Johnson, an act was passed allowing suspensions but preventing the President from making removals, and from making temporary appointments, except in the cases of death, voluntary resignation, absence or sickness of the chief of any bureau.

Under the implied powers which the President of the United States has received by the general investiture of power as the chief Executive officer of the United States, may be enumerated the following: As Commander-in-Chief of the Army and Navy of the United States, he has power to engage in hostilities, to institute a blockade, and to authorize captures and condemnations on the high seas. He has power to recognize a State Government in so far as to determine whether the government organized in a State is the duly constituted government of that State. He has power to protect aliens, as the care of our foreign relations is committed to him; to remit forfeitures under his pardoning power; to order a *nolle prosequi* to be entered at any stage in a criminal proceeding in the name of the United States; to order a new trial on the sentence of a court martial; and in time of war to suspend the writ of *habeas corpus* in any district where for the time being the civil authorities are powerless. He is authorized by the Constitution to appoint heads of departments in his official household. This is likewise done by and with the advice and consent of the Senate. This official household constitutes the Cabinet. The term Cabinet is not known to the Constitution of the United States, and has

been adopted in American political parlance in imitation of the term for the chiefs of the departments of the English Government. The Executive officers, who are the more immediate advisers of the President, and in the selection of whom greater latitude is allowed by the Senate than in that of any other officer, are the Secretary of State, Secretary of Interior, Secretary of the Treasury, Secretary of War, Secretary of Navy, Postmaster General, and Attorney General.

The Departments respectively under the direction of the secretaries are known as the Department of State, the Department of War, Department of the Treasury, Department of the Navy, Department of the Interior, the Post-office Department, and that under the Attorney General as the Department of Justice. There is also a Department of Agriculture, the head of which is, however, not a Cabinet officer.

The several duties of the Department of State are by law defined to be correspondences, commissions, and instructions to or with public ministers and consuls from the United States; carrying on of negotiations with public ministers of foreign states or princes; receiving memorials or other applications of foreign public ministers or other foreigners, and such other matters respecting

foreign affairs as the President of the United States shall assign to the department, and the Secretary shall conduct the business of the department in such manner as the President shall direct.

To the Secretary of State are also entrusted the custody and charge of the seal of the United States and the seal of the Department of State. It is his duty to promulgate the laws ; to publish the same ; to give notice of intended or proposed amendments to the Constitution of the United States ; to give notice of the adoption of constitutional amendments, and to promulgate the same ; to lay before Congress, within ten days after the commencement of each regular session, a statement of the returns of port collectors and of foreign agents, a report of the foreign regulations of commerce and other commercial information, and of consular fees, and a synopsis of such of his communications to and from diplomatic officers as he may deem expedient to give for public information, a full list of all consular offices, &c.

The Department of the Treasury is charged by law with the duty of adjusting all claims and demands whatsoever by the United States or against them ; to keep an account of all appropriations, receipts and expenditures, and make estimates of the expenses of all the departments of

the Government ; to keep accounts of all receipts of internal revenue, and the accounts of all officers collecting revenue ; to keep an account of all expenditures for contingent purposes ; an account of all contingent expenditures for all governmental bureaus ; and an account of all the funded indebtedness. The Secretary signs all warrants on the Treasury of the United States, and is charged with the duty, from time to time to digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit. It is his duty to prescribe the forms of keeping and rendering all public accounts and making returns ; he is charged with the collection of all duties on imports and tonnage ; and all accounts of the expenditures of public moneys are to be settled within each fiscal year, except where the distance of the places where such expenditure is to be made shall make further time necessary.

It is his duty to interpret the revenue and custom laws of the country, and to make proper regulations not inconsistent with law in relation to such collection. He is charged with the duty of preparing proper statistics showing the amounts of goods that are imported and exported ; and also what regulations he has made in relation thereto. He is authorized to receive deposits of gold and

to give certificates therefor, and the coin and currency of the country are placed under his supervision. He is authorized to appoint disbursing agents; to appoint persons who are authorized to recover moneys due to the United States, and to see to it that the revenue laws of the country are enforced. The Secretary of the Treasury is required to make an annual report to Congress, which report shall contain, according to the provisions of law, an estimate of the public revenue and public expenditure for the fiscal year then current; plans for improving and increasing the revenues from time to time, for the purpose of giving information to Congress, and adopting modes of raising moneys requisite to meet the public expenditures; he is also to report all contracts for the supplies of the service which have been made by him under his direction during the year preceding, and also a statement of all expenditures of moneys appropriated for the discharge of miscellaneous claims not otherwise provided for, and paid by the Treasury; he is to report to Congress his rules and regulations in relation to the appraisal of goods imported into the United States, and to make a report showing the value of such goods, and how much duty was collected; a complete statement of the amounts collected from

seamen and the amounts expended for seamen ; the amount expended at each Custom-house and the number employed thereat. A Bureau of Statistics is created under his direction and control, which is required to collect statistics of the agricultural, manufacturing, and domestic trade ; of the currency and banks of the several States and Territories ; and the Secretary is required to accompany his annual statement of public expenditure with reports which may be made to him by the auditors charged with the examination of the accounts of the Department of War and the Department of Navy respectively, showing the application of moneys appropriated for those departments for the respective year. He is required to lay before Congress annually an abstract of the separate amounts of moneys received from internal duties or taxes in each of the respective States and Territories or election districts of the United States. He is also required to cause an annual report of statistics of commerce and navigation to be prepared by the chief of the Bureau of Statistics, to be likewise laid before Congress annually ; to report the number of persons employed in the Coast Survey and the business connected therewith, and the amount of compensation of every kind paid therefor. Every quarter he is required

to publish in some newspaper at the seat of Government a statement of the whole receipts of such quarter, and the whole expenditures of such quarter; also showing the amount to the credit of the Treasury, in the sub-Treasuries, in the different banks, in the Mint, and other depositories; the amount for which drafts have been given, and those remaining unpaid; and the balances remaining subject to draft; likewise to note all changes made in the public depositories, and the reasons for such change.

The law provides for the appointment of controllers, auditors and treasurers in the department, and specifies their duties. It also provides for the appointment of registers, Commissioners of Customs, Commissioners of Internal Revenue, Controller of the Currency, and of the Bureau of Statistics, and Bureau of the Mint. The heads of these several departments are appointed by the President, by and with the advice and consent of the Senate, but the officers so appointed are placed under the direction of the Secretary of the Treasury.

The Department of Justice, at the head of which stands the Attorney-General of the United States, consists, in addition to the Attorney-General, of an Assistant Attorney-General, a Solicitor-General, a

Solicitor of the Treasury, an Assistant Solicitor of the Treasury, a Solicitor of Internal Revenue, a Naval Solicitor, and Examiner of Claims, all of which are appointed by the President, but are under the direction of the Attorney-General. The Attorney-General is required to give his advice and opinion upon all questions whenever required by the President. No public money is to be expended upon any site or land purchased by the United States for any purpose until the written opinion of the Attorney-General is had in favor of the validity of the title, and the District Attorneys of the United States in the various judicial districts of the United States are required, upon the application of the Attorney-General, to furnish any assistance or information in their power in relation to the title of public property lying within their respective districts.

All the Executive Departments are authorized to ask for advice from the Attorney-General on any question of law upon which the heads of the departments may have doubt. The Attorney-General and Solicitor-General are required to argue suits and writs of error and appeals to the Supreme Court of the United States, and suits in the Court of Claims in which the United States is interested. And the officers of

the Department of Justice, under the direction of the Attorney-General, are required to give all opinions and render all services requiring skill of persons learned in the law, necessary to enable the President and heads of Departments, heads of Bureaus, and other officers in the departments to discharge their respective duties. They are required to procure proper evidence for, and to conduct and prosecute all suits and proceedings in the Supreme Court and Court of Claims, in which any officer of the United States is a party or may be interested. General superintendence is given to the Attorney-General over all the United States attorneys and marshals of all districts in the United States as to the manner of the discharge of their respective duties. The Attorney-General is authorized to employ counsel in such cases as in his discretion may require additional counsel.

The Solicitor of the Treasury has a general supervision over the bonds and actions of all persons charged with the collection of taxes and internal duties. He has power to take cognizance of, and to take measures to prevent and detect all frauds or attempted frauds upon the revenue, and to make such rules in relation to the collection of the revenue as in his judgment, and with the approbation of the Attorney-General, he may see fit.

The Attorney-General is required annually to print an edition of such opinions as may be deemed by him worthy of permanent record; and to make annually a report of the conduct of his office and of his subordinates, to Congress.

The Post-office Department consists of the Postmaster-General and three Assistant Postmasters-General, appointed by the President. It is the duty of the Postmaster-General to establish and discontinue post-offices; to prescribe the manner of keeping accounts and rendering returns; to make contracts for postal service; by and with the consent of the President, to negotiate postal treaties and conventions; reduce or increase the rate of postage or mail matter conveyed between the United States and foreign countries; make rules and regulations as to fines, penalties, forfeitures or disabilities in relation to his department. He is required to make an annual report to Congress of all contracts made for carrying the mail within the preceding year; the prices paid, etc., of all land and water mails established or ordered within the preceding year; the names of persons employed to transport it, price paid etc., and all allowances made to contractors within the preceding year in addition to the sum originally stipulated in their respective contracts, and the reasons

for the same; a report of all the curtailment of expenses effected within the preceding year; a report of the revenues of the department for the preceding year, and the amount actually paid for carrying the mail, and comparing the same with preceding years. The Postmaster is required to report to Congress all contracts made for the carriage of mail matter, and to give a detailed account of the postal business and agencies in foreign countries, which report is first to be submitted to the Secretary of the Treasury, and then printed and submitted to Congress as part of the Treasurer's Report.

The Department of the Navy consists of the Secretary of the Navy and Assistant Secretary of the Navy and a large executive force. The War Department consists of the Secretary of War and a large executive force. It is unnecessary to enter into detail as to the duties and functions of the Naval and War Departments, as the terms indicate what their functions are.

The Department of the Interior is a much more complicated one. The Secretary of the Interior has an Assistant Secretary, appointed by the President. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects: 1. The census;

therefore a Census Bureau with its staff of officers is under his direction and control. 2. The public lands, including mines. 3. Indians. 4. All pensions and bounty lands. 5. All patents for inventions. 6. The custody and distribution of all publications. 7. The Education Department. 8. The Government Hospital for the Insane. 9. The Columbia Asylum for the Deaf and Dumb. Under him, therefore, there is a Commissioner of the Land Office ; a Commissioner of Indian Affairs ; a Commissioner of Pensions ; a Commissioner of Patents, and Assistant Commissioners ; Superintendent of Public Documents, a Bureau of Railroads, Superintendent of Census, Director of Geological Surveys, and Commissioner of Education.

A supplemental Executive Department was created in 1862, independent of the other departments, but the head of which is not a member of the cabinet, called the Department of Agriculture. This commissioner is charged with the duty of procuring and preserving all information concerning agriculture which can be obtained by means of books and correspondence, and by practical and scientific experiments ; to collect new and valuable seeds and plants, and to test by cultivation the value of such of them as may require such tests, and to propagate such as may be worthy of

propagation, and to distribute them among agriculturists. This purchase and distribution of seeds by the department is confined to rare and uncommon ones, or such as can be made more profitable by frequent changes from one part of the country to another, and the purchase for propagation of trees, plants, shrubs, vines, and cuttings, are confined to those which are adapted to general cultivation, and to promote the interests of agriculture and horticulture throughout the United States.

CHAPTER IV.

THE JUDICIAL POWER.

ONE of the main reasons why the Articles of Confederation failed securely to establish national entity, was because no proper judicial organization existed thereunder to enforce the law; Congress was made the tribunal of last resort in controversies between the States, and the only power given to Congress to create judicial tribunals was to create prize courts.

Alexander Hamilton, in treating of the Judiciary department of the United States and the necessity for its creation, with reference to the power to adjudge acts void which are passed by a coördinate department—the Legislature—says: “The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to legislative authority, such for instance, as that it shall pass no bill of attainder, no *ex post facto* law and the

like. Limitations of this kind can be preserved in practice in no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void; without this all the reservations of particular rights or privileges would amount to nothing. * * * It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American Constitutions, a brief discussion of the ground on which it rests cannot be unacceptable."

"There is no position which depends on clearer principles than that every act of delegated authority contrary to the tenor of the commission under which it is exercised is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construc-

tion that they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption where it is not to be collected from any particular provision in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A Constitution is in fact, and must be regarded by the judges as a fundamental law. It must, therefore, belong to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought to be preferred. In other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents. Nor does the conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the

power of the people is superior to both, and that where the will of the Legislature declared in its statutes stands in opposition to the will of the people declared in the Constitution, the judges ought to be governed by the latter rather than by the former ; they ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental. * * * It can be of no weight to say that the courts on the pretence of a repugnancy may substitute their own pleasure to the constitutional intentions of the Legislature. This might as well happen in the case of two contradictory statutes, or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law, and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it proved anything, would prove that there ought to be no judges distinct from that body. If, then, the courts of justice are to be considered as the bulwarks of a limited constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial officers, since nothing will contribute so much as this to that independent spirit in the judges which must be

essential to the faithful performance of so arduous a duty."—*Federalist No. 78.*

I have cited the foregoing passage at length because vesting courts with power to declare the acts of the highest law-making power unconstitutional would, at first blush, seem to be dangerous. In the mother country, from which the United States derived its institutions, such a power is not given to the courts. Violent constructions of the meaning of words employed by the Legislature are sometimes resorted to, on the theory that Parliament could not have intended to mean anything repugnant to natural justice ; yet no British Court ever declared an act of Parliament void on the ground of a violation of the English Constitution.

But for the fact that there is a check upon the judges to prevent them from wantonly vetoing legislation by declaring it to be unconstitutional, the judiciary would be the supreme governing power of the land, and that as there is no power superior to the judicial one, to revise their errors of judgment or to make inquiry whether they have reasonably exercised that power or not, it is within the power of the court of last resort of the United States to declare every act unconstitutional, however violent such a declaration may be and thus nullify all legislation. There is, however, in the Constitution of the United

States a check upon this power, lodged in the legislative body itself. The power to impeach and to remove for any cause appearing sufficient to two-thirds of the Senate upon presentment by the House, makes all the members of the Supreme Court of the United States subject to removal if they are guilty of a gross violation of the judicial discretion lodged by the Constitution in them. And as the members of the Senate, who are charged with the duty of trying the impeachment are responsible to their States, and the members of the House who make the presentment are in their turn responsible to their constituents—the people of the States—(by this system of checks and balances thus created by the Constitution for the purpose of preserving each department within its proper sphere) are finally called upon to determine whether their servants have acted within the limits of the powers respectively delegated to them.

The reasoning of Hamilton seems to be conclusive—that no written Constitution deputing limited powers can, by any possibility, be enforced against the deputed agents exercising for the time such powers, unless a court of judges, sitting for life or during good behavior, is interposed between the people and their legislative agents, clothed with

the power to declare a final opinion on the constitutionality of the statutes emanating from the Legislature. The Constitution of the United States does not stand alone in that particular. All the State Constitutions grant to the State Courts of last resort the power finally to declare upon the constitutionality of State legislation, and every statute, therefore, passed in the United States may be called into question, as to the constitutional power to enact the same, either before a State or federal court, or before both.

The judicial power of the United States is lodged under the Constitution in a Supreme Court and such inferior tribunals as Congress may from time to time ordain and establish.

The judges of the Supreme Court and inferior courts hold their offices during good behavior, and they are entitled to receive a compensation which, during their continuance in office, is not permitted to be diminished. The judicial power conferred upon the Supreme Court extends to all cases in law and in equity arising under the Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors and other public ministers and consuls; to all cases of admiralty and maritime jurisdiction to which the United States shall

be a party ; to controversies between two or more States ; between a State and citizens of another State ; between citizens of different States ; between citizens of the same State claiming lands under grants of different States ; and between a State or the citizens thereof and foreign States, citizens or subjects. By the eleventh amendment to the Constitution, however, it was enacted that the judicial power of the United States was not to be construed to extend to any suits in law or in equity, commenced or prosecuted against one of the States by citizens of another State, or by citizens or subjects of any foreign State.

It is further provided in the Constitution, that in all cases affecting ambassadors and other public ministers, consuls, and cases in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court has appellate jurisdiction, both as to law and fact, with such restrictions and regulations as Congress may make. As the Constitution itself declared wherein the original jurisdiction of the Supreme Court shall consist, Congress thereafter became powerless to assign original jurisdiction to that court in cases other than those specified in the article. A State may bring

an original suit in the Supreme Court against a citizen of another State, but not against one of her own citizens.

Although the Constitution vests the Supreme Court with original jurisdiction in certain cases mentioned, which may not be enlarged by Congress, Congress, nevertheless, may lodge concurrent jurisdiction in some of the inferior courts created by it under the powers conferred by the Constitution.

Under the Constitution, the States are prohibited from doing a number of things, some of which are incompatible with the interests of the Union. There would be no possibility to keep the States within the limitations thus imposed if the States themselves were to be the judges of the extent of such prohibition, or its application to a particular case ; and, therefore, with the Supreme Court of the United States is necessarily lodged the power to correct and prevent infractions thereof. "This body," says Hamilton, "must have either a direct negative on the State laws, or authority in the federal courts to over-rule such as might be a manifest contravention of the articles of the Union. There is no third course that I can imagine. * * * Controversies between the nation and its members or citizens can only be properly referred to national

tribunals. Any other plan would be contrary to reason, to precedent, and decorum."

"The peace of the whole," again says Hamilton, "ought not to be left at the disposal of a part. The Union will undoubtedly be answerable to foreign powers for the conduct of its members, and the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. Therefore, the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of public faith than to the security of public tranquility. The power of determining causes between two States, between one State and the citizens of another, and between the citizens of different States, is perhaps not less essential to the peace of the Union than that which has just been examined. The institution of the Imperial Chamber by Maximilian, towards the close of the fifteenth century, did much to prevent the dissensions and private wars which had theretofore harried Germany. It may be esteemed a basis of the Union, that the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States, and if it be a just principle that every Government ought to possess the means of execut-

ing its own provisions, by its own authority, it will follow, that in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens."

The jurisdiction conferred in the case of treaties is so necessary a one that it is almost too clear for argument. The cognizance of maritime causes is a necessary part of the power of the National Government as a matter of public peace. It is the only jurisdiction that was conferred by the Articles of Confederation on national courts.

The only case where citizens of the same State can go into the courts of the United States, is where they claim lands under grants of different States.

Shortly after the adoption of the Constitution, the Judiciary Act was passed, constituting national tribunals inferior to the Supreme Court, the powers and duties of which, under judicial interpretation, we propose now to examine.

When the question to which the judicial power of the Federal Government extends under the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the

federal courts jurisdiction of that cause, although other questions of fact or law may be involved in it. The other questions may be decided as incidental to that which gives the jurisdiction. Cases may arise under the laws of the United States by implication, so that they come under the judicial power of the Federal Government. It is not unusual for a legislative act to involve consequences not expressed. Where a defendant seeks protection of the laws of the United States or under the Constitution in any of the States, it is a case arising under the law, and gives to the United States courts jurisdiction.

The Constitution not only confers admiralty jurisdiction upon the courts of the United States, but as it superadds the word maritime, every latent doubt is removed thereby as to the extent of the jurisdiction, and it has, therefore, been held to include all maritime contracts, torts and injuries which are, in the understanding of the common law as well as of the admiralty law, maritime causes. The grant, therefore, of admiralty power to the federal courts was not intended to be limited or interpreted by the theory of cases of admiralty jurisdiction in England when the Constitution was adopted. The admiralty, therefore, has jurisdiction over maritime contracts, although the power

contemplated begins and ends in the State, and is prescribed only in waters within the State; and the admiralty jurisdiction extends to torts committed on the navigable waters although they are within the body of a county within the State.

As to the original jurisdiction of the Supreme Court of the United States, Congress cannot add to nor diminish that jurisdiction; but in the creation of the inferior federal courts, it may so regulate the jurisdiction conferred by the Constitution as to deprive one court of it, substitute another court, or change the courts upon which jurisdiction has been conferred at its own will; and of course it can modify the practice of the court in any other respect that it may deem conducive to the administration of justice.

It is not competent for the States, by any local legislation, to enlarge or limit, or narrow the admiralty and maritime jurisdiction of the federal courts. In exercising this jurisdiction they are exclusively governed by the legislation of Congress, and in the absence thereof, by the general principles of the maritime law. The State Legislatures have no right to prescribe the rule by which the federal courts shall act, nor the jurisprudence which they shall administer. If any other doctrine were established it would amount to a com-

plete surrender of the jurisdiction of the federal courts, to the fluctuating policy and legislation of the States. If the States have a right to prescribe any rule, they have a right to prescribe all rules, to limit, control, or bar suits in national courts.

In an early case before the Supreme Court of the United States it was claimed that an Indian nation with which the Government had entered into engagements analogous to treaties, was a foreign state in the sense of the Constitution; but this claim was negatived by the court, and the existence of such tribe as an independent power denied. The Indians in that respect form an anomaly in American jurisprudence, because they are neither citizens nor aliens while in their tribal condition. They are under the exclusive jurisdiction of a sub-department of the Interior Department of United States government known as the Indian Department, but during a brief period they were under the jurisdiction of the War Department.

There are many cases where the State courts have concurrent jurisdiction with the United States courts, such as where the United States sues, where a State sues a citizen of another State, where a State sues an alien, where a citizen of one State sues another State, where a citizen sues an alien

and where an alien sues a citizen. In all such cases, however, it is provided by United States statute, that a removal can be had of such causes either before or after issue joined and before trial, into the United States courts by either party to the record.

The reader's attention has already been drawn to the Amendment of the Constitution which provides that a State cannot be made a party at the suit of a citizen of its own State or of another State, adopted for the purpose of guarding against the impairment of the dignity of the State by being constantly subjected at the instance of any private individual to being dragged before the Supreme Court of the United States as a delinquent. Although this provision guards a State, as such, from being made a party, nevertheless the construction given by the United States courts to this clause, allows State officers, upon whom rests the duty to perform an act under the direction either of the Constitution of the United States or a statutory law of the United States, to be subjected to mandatory proceedings on the part of the Supreme Court of the United States, compelling them to conform to judgments and decrees, and to perform or not to perform a particular act.

At the time of the formation of the Constitution

considerable criticism was made upon the clause which secured a jury trial in criminal cases alone; but as the common law of England was part of the heritage of the people of the United States, and as a large part of the system of jurisprudence which was thus transferred to the American people from England was that which was administered by chancellors without a jury, it was deemed wise not to interfere with the body of law wherein jury trials were unknown, for which no substitute could readily be found. Besides, as the Constitution of the United States was mainly intended to guard against tyranny, and as the tyrannical powers of government would be exercised not in private personal claims cognisable in equity courts, but through the criminal courts, and might be attempted to be exercised by bills of attainder passed by pliant legislative bodies, the provision preventing the passage of *ex post facto* laws and bills of attainder and securing to every man the right to a trial by jury at the place where the alleged crime was supposed to be committed, was a sufficient safeguard against the tyranny of executive and legislative power. A statute was therefore held to be unconstitutional which provided that a party might be tried by the court without a jury on a charge of libel, although that statute gave him the right to appeal to another

court where the charge must be tried by a jury, because the accused was entitled in the first instance to be tried by a jury without having his cause prejudiced by a conviction by a court prior to such trial ; and although the statute gave the prisoner power to determine how he should be tried, yet as the constitutional provision was intended not for the protection of one individual, but for the protection of the community, such a waiver of his rights was not conclusive : the courts would look at the record alone, and if the trial was unconstitutional the individual waiver made no difference as to the illegality of the conviction.

No provision in the United States Constitution is perhaps more conservative of individual liberty, or more carefully worded in that particular than that which relates to treason. No case of constructive treason can arise under the plain provision of the Constitution in that particular. No conspiracy against the Government, however clear, unless it consists of the actual levying of war, can be construed to be treason. Even resistance to the execution of the laws of the United States accompanied with force, if such resistance is for a private purpose only, is not treason. To constitute the offence of treason, the resistance must be of a public nature.

Under the section which gives to the citizen of each State the privileges, and immunities of the citizens of the several States, it has been held that a citizen of one State cannot claim the right to vote for an election to office in another State in which he is not a citizen under the special laws of that State. Each State has the right to declare who its citizens in a political sense shall be. The meaning of these rights of a citizen of one State in other States has been limited to the right to hold and dispose of real and personal property, to trade, and to transact all the private affairs of life ; but it is held that it was not intended by the Constitution to obliterate the privileges and immunities which arise from citizenship in the several States, nor to interfere with the rights of the States to pass such laws as they may see fit by which they can properly determine whom to admit to the right of suffrage, the time of residence within the State necessary to constitute citizenship, nor to limit the power of the States to subject their citizens, and therefore the citizens of all other States, to certain regulations and limitations as to political rights arising from property or residence considerations. Nor can a citizen of one State claim immunity from the laws to which the State subjects its own citizens. The main purpose of this provision is to prevent dis-

criminating legislation against citizens of one by other States, and to secure for them the equal protection of the laws of all States. Nor can a citizen claim protection of the laws of his own State in another State, because were he permitted to do so, his rights would be superior in the State of which he is not a citizen to those which he has wherein he is a citizen. Another limitation exists, that the word citizen means citizen of the United States. If either of the States recognized certain persons as citizens who are not so recognized by the United States, such citizens would not have the immunities and privileges accorded to the citizens of the United States. If a State were to recognize as citizens of the State women or minors who are not admitted to the rights of citizenship in the United States, they could not claim this general citizenship by reason of the special law creating them citizens within the domain of a single State.

Under the clause of the Constitution of the United States which gives Congress the power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States, a considerable body of legislation and of judicial decisions has sprung up in relation to the public lands of the country. At the time of

the adoption of the Constitution a vast body of land was ceded by several States to the general Government. By the Louisiana and Florida purchases, the Texas acquisitions, and subsequently by the purchases from Mexico under the Guadalupe Hidalgo treaty of a large proportion of the present western coast of the United States, and finally by the purchase of Alaska, an enormous territory, covering three and a half million square miles, came into the possession of the United States to act with as it saw fit. With this domain the Government dealt; first, in selecting vast tracts for the Indian tribes; secondly, in reserving miners' rights; thirdly, in providing homesteads for actual settlers; fourthly, in granting concessions to soldiers in the Indian, Mexican, and Civil wars by way of bounty; fifthly, in gifts to States for educational and other purposes; sixthly, in making enormous grants to railway corporations as inducements to build the trans-continental lines which connect the Pacific with the Atlantic coasts; seventhly, by the sale of the public lands as a source of revenue. Under the homestead laws any person may select one hundred and sixty acres, and after a specified time, if he erects thereon a house and actually tills the soil and gives notice of his intention to occupy the same, he can for a mere nominal payment cov-

ering expense of issue of patent, etc., become the owner of the land he had in possession.

Under the Florida, Louisiana, and Mexican purchases the United States was called upon to deal with grants of great bodies of land which had been by the Spanish and French Crowns and Mexican Government ceded to individuals, colonies and adventurers during the prior occupation of that territory by these foreign governments. Under the promise given by the treaties by which the purchases were made, that full faith and credit would be given to titles theretofore acquired in good faith, the United States has issued patents for vast tracts of those territories to individuals whose claims of title antedated the cession to the United States. An attempt has been made in recent years to limit the rights acquired under such patent to eleven square leagues, but such efforts have been rejected by Congress, on the ground, that however desirable it may be to prevent the public domain from being monopolized, good faith demanded and the treaties compelled respect for such prior titles by immunity from the claim of the United States to lands thus separated from the public domain.

Under the provision of the Constitution which gives to the Constitution of the United States and

the laws of Congress supreme power, only such power is meant which has been specifically or by necessary implication conferred upon Congress by the Constitution. The States are sovereign and independent governments in all matters not delegated to the general Congress. Their power to tax is unrestricted unless they exercise it in such a way as to impede the operation of proper United States legislation or the functions of United States officers. In this power the State is sovereign and supreme, and its wisdom or fairness cannot be inquired into by federal tribunals.

The amendments to the Constitution, with the exception of the last three, are mainly intended to secure personal rights against infringement by the United States Government. Under the first amendment which forbids Congress from passing any law respecting the establishment of religion or prohibiting the free exercise of speech, of the press, or of the people peaceably to assemble, it has been held that Congress has no power to punish individuals for disturbing assemblies of peaceable citizens ; that this is the prerogative of the several States, and that it belongs to the preservation of the public peace entrusted to local legislation.

Although the right of the people to keep and bear arms is secured by the Constitution of the

United States, the provision has been held not to prevent the passage of a law to prevent the carrying of concealed weapons.

Under the provision which secures the right of the people against unreasonable searches and seizures, it has been held that those provisions of the United States revenue laws which authorize a revenue officer to issue a summons for the production of books and papers were valid, and that this provision in itself does not prevent the Legislatures of the several States in absence of any State and constitutional inhibition from passing such seizure laws as they see fit.

The provisions securing all persons held to answer for a capital or otherwise infamous crime against conviction except by a presentment or indictment of a grand jury, except in cases arising under the land and naval forces in time of war, or public danger, have been construed not to apply to misdemeanors, and not to apply to trials in a State court for an alleged crime without any previous indictment by a grand jury. And although a man may not be twice put in jeopardy of life or limb for the same offence, nevertheless he may be twice tried for the same crime, if no acquittal or conviction has been had by a prior jury because of a disagreement or mis-trial. In the provision

that no man shall be deprived of life, liberty or property without due process of law, process has been held to mean some form of proceeding of a judicial nature known to the common law. Therefore, an order of the President is not due process, nor is a statute which deprives a man of his property by the repeal of a prior grant of land due process. Rights once acquired cannot be divested without a process known to judicial forms, resulting in a trial of some kind.

In the same amendment it is provided that no private property shall be taken for public use without just compensation. This of course implies that no private property shall be taken for private use at all, with or without compensation. Public use, of course, implies all use made necessary by war, in which event property may be taken without compensation ; and also for all public purposes, when there is no war, which arise under the exercise of the power of eminent domain. This right need not be exercised directly by the general Congress, but may be deputed to corporations by giving grants of power to them to perform functions public in their character, such as building of roads, bridges, water-ways, &c., and who may be empowered to exercise the right of eminent domain on making compensation in a manner provided by a statute.

No State nor the United States can take property from individuals for ends which are not public. Thus it has been held that to exercise the taxing power in aid of private enterprises, however desirable the encouragement of such enterprises may be for the general prosperity of the community, is unconstitutional and improper legislation. It is possible that at some future day the Supreme Court of the United States may reverse its former decisions under the regulating of commerce clause and upon the ground just stated, declare protective tariff legislation under guise of laws for the collection of revenue unconstitutional. No State can condemn the property of the United States. The power in that respect of the Federal Government is exclusive. It can neither be enlarged nor diminished by a State, nor can any State prescribe the manner in which it must be exercised, and the consent of a State can never be a condition precedent to its exercise.

In case of criminal prosecutions the Constitution limits the power of the courts to trials within the district where the crime has been committed, gives to the accused the right to be confronted with the witnesses against him, secures for him the compulsory process of courts to obtain witnesses in his favor, and compels the courts to assign counsel for

his defence. Under this provision it has been held by the United States courts, that no persons, except those who are connected with the army or navy, in districts where the courts are open can be charged with crime and tried before a military commission.

One of the most important protections to individual liberty embodied in the Constitution of the United States is in the seventh article of the amendments, which provides that no fact tried by a jury shall be reexamined by any court in the United States otherwise than according to the rules of common law. This secures citizens of the United States against vexatious proceedings by which they may be again and again harassed on the same subject matter of complaint, after the matter has once been judicially determined. When so judicially determined both the laws of the States and the procedures of the courts of the United States provide for proper appeals by means of which the question of errors may be considered and determined, and thus alone the subject matter of the controversy may be reviewed. When determined, however erroneously, by a court of last resort or by a competent judicial tribunal from whose judgment no appeal has been taken, the judgment is to be considered final, and in the

interests of justice not to be shaken nor to be re-examined by any department or any special court or by any other court, as between the same parties.

Trial by jury is so often referred to in the National and State Constitutions that what is a trial by jury has been the subject of judicial examination, and it has been held that a decision by a jury in which three-fourths of a jury are permitted to determine, is not such a trial by a jury; that the only proper judgment known to the Constitution that can be rendered in a trial by a jury, is that which requires unanimity on the part of the jury.

The eighth amendment, which provides that excessive bail shall not be required, nor excessive fines be imposed, nor cruel or unusual punishments be inflicted, has been held to apply only to the imposition of fines and punishments by United States tribunals for offences against the United States, and that it was not intended to protect the citizens of the several States from the penal codes of such States, although the fines or punishments may be considered both excessive and cruel.

The thirteenth, fourteenth, and fifteenth amendments, which were the result of the civil war, had for their object the abolishing of slavery, the securing to all persons who were citizens of the United States the position of citizens of the States

wherein they resided, and to prevent any State from withholding the equal protection of its laws from any of the citizens of the United States by reason of any distinction of race, color, or previous condition of servitude. They also had for their object to abolish the apportionment of congressional seats which had previously been based upon population unrepresented as citizens ; the slaves in the Southern States, counting as part of the population prior to the war for purposes of representation, although treated as chattels for all other purposes, gave to the South an undue proportion of representation as compared with the free white population of the North. These amendments were also intended to prevent persons from becoming officers of the United States, who had actually engaged in rebellion unless the disability was removed ; and finally their provisions are clear and unmistakable declarations forever to prevent the questioning of the validity of the public debt of the United States which had been created to suppress the rebellion, and on the other hand forever to prevent the United States from assuming to pay, or the States from ever permitting the payment of, any debt which had been created or incurred in aid of the insurrection or rebellion. Every claim for loss or emancipation of any slaves, or losses of rebels in property, are forever

barred by these amendments, and all courts have the duty imposed upon them to declare all such debts, obligations and claims illegal and void. Under the foregoing amendments it has been held that the States are not permitted, under State educational laws, to exclude colored children from equal educational advantages because of color or their African descent, but that separate schools might be maintained wherein such children may be educated apart from the whites.

Under the provision that the rights of the citizens of the United States shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude, it has been held by the Supreme Court of the United States that the right of suffrage is not thereby conferred upon any one ; that it simply prevents the States from giving preference to one citizen of the United States over another on account of race, color, or previous condition of servitude, and that it leaves the States as free as theretofore to regulate the right to vote, but prevents them from making any distinction by reason of race, color, or previous condition.

We have now passed in review the leading articles of the Constitution of the United States, and the main questions that have arisen for judicial

determination under them. The apprehension that was originally felt that the Supreme Court of the United States would not faithfully declare the principles of the Constitution, and that it either on the one side would be under the domination of the legislative body, or, on the other, attempt to dominate the Legislature by improperly declaring such measures unconstitutional which could be so declared only by a violent misinterpretation of the fundamental law, has proved unfounded. The duty has thus far been performed with conscientious firmness, and so thoroughly do the people of the United States, including its Legislatures, rely upon the fearless performance of that duty on the part of the courts of last resort, that when an objection is made in a legislative body, that a certain provision in a proposed law is of doubtful constitutionality, the ready answer is made that if it is so the courts will so declare it, and thus eliminate it from the law.

We have seen that the Supreme Court of the United States itself is established by the Constitution. The power to establish inferior tribunals was given to Congress. The Supreme Court having original jurisdiction in two classes of cases only, viz., in cases affecting ambassadors, other public ministers and consuls, and in cases in which the

State is a party, Congress could not vest any portion of the judicial power of the United States except in the courts ordained and established by itself. The appointment is vested by the Constitution in the President, but the organization of these inferior tribunals was made by the Judiciary Act of 1789. This act repeats the language of the Constitution of the United States in creating the Supreme Court, and extends the power of the court so as to include the right to issue writs of prohibition to the district courts when proceeding as a court of admiralty and maritime jurisdiction, and writs of mandamus in cases warranted by the principles and usages of law to any courts appointed by the authority of the United States or to persons holding office under the authority of the United States, where a State or an ambassador or other public minister, or a consul or vice-consul is a party. It defines the appellate jurisdiction of the Supreme Court to be by appeal, or writ of error from the final judgments of circuit courts or district courts acting as circuit courts; in civil actions brought there by original process or removed there from the courts of the several States; in all final judgments in the Circuit Court in civil causes removed there from any district court by appeal or writ of error where the amount in dispute exceeds two

thousand dollars; also in cases of equity where the amount in dispute exceeds five thousand dollars; in all prize cases where the matter in dispute exceeds the sum of two thousand dollars, an appeal lies from the judgments of the District Courts. Likewise the Supreme Court is to entertain appeals of prize causes which were depending in the Circuit Courts. It is provided that if the judges are divided in opinion in any Circuit Court, the point shall be certified to the Supreme Court, and its decision or order in the premises shall be remitted back to the Circuit Court and there entered of record. An appeal is provided by the act of 1863 from final judgments or decrees of the District of Columbia to the Supreme Court of the United States. By subsequent legislation, under which the Court of Claims was created, appeals were provided for to the Supreme Court of the United States from decisions of the Court of Claims when such decisions are adverse to the United States in every case, and where adverse to the claimants when the amount in controversy exceeds three thousand dollars. It was further provided by the Judiciary Act that in case of a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the

validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against its validity, or where is drawn in question the validity of a statute or an authority exercised under any statute, on the ground of being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity, or where any title, right, privilege or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege or immunity, especially a set-off or claim by either party under such Constitution, treaty, statute, commission or authority, in such case the final judgment or decree may be reexamined, and reversed or affirmed in the Supreme Court of the United States on a writ of error, and the writ shall have the same effect as if the judgment or decree complained of had been rendered or passed upon in a court of the United States, and the proceedings upon the reversal shall be the same except that the Supreme Court may in its discretion proceed to a final decision of the cause and award execution, or remand the same to the court from which it was removed ; and the Supreme Court may reaffirm, reverse, modify or affirm the judgment or

decree of such State court, and may award execution or remand the same to the court from which it was removed by the writ.

This was a most important addition to and clear definition of the powers of the Supreme Court, for without it State courts, when once having acquired jurisdiction of a case, the same not having been removed or not being removable under the law to the federal courts, would have had the final power to determine upon the interpretation of an act of Congress or of a treaty, or of the application of the Constitution to any particular case ; and however strenuously a litigant might have invoked the protection of the Constitution of the United States against the wrong which was attempted to be done him, and however correct his views might have been, it would still have been in the power of the court to have denied, as against a statute of the State, any relief, and wilfully to have shut its eyes to the protection which was intended to be given by the Constitution of the United States to the litigant, and its decision would have been final, but for the fact that the Judiciary Act secures to every litigant the right to spread upon the record the questions applicable to his case, arising under the act of Congress or under the Constitution of the United States, and thus open to himself an

appeal to the court of last resort of the United States. Not only was this provision necessary for the purpose of securing the supremacy of the Constitution and the acts of Congress thereunder over the Constitutions and laws of the several States, but it was also necessary for the purpose of securing uniformity of decisions and of interpretation of the Constitution of the United States itself.

A vast number of questions have arisen under this power of appeal to the Supreme Court of the United States, and the business of that court became so encumbered by reason of the numerous appeals from State courts on the mere suggestions on the record of a United States question, that it became necessary for the court, somewhat arbitrarily, to limit the appeals in such cases, and to limit the inquiry arising from such an appeal from a State court to the one question, "Is there a United States question involved, and if so has it been properly decided by the State courts?" The Supreme Court of the United States have therefore declared that when an appeal is made from, or writ of error taken to a court of last resort of a State, they will not re-examine as an appellate court the correctness of the decision of the court of last resort upon any other point than the constitutional one or one arising under the act of Con-

gress ; so that if they should come to the conclusion that the case was correctly decided on the constitutional question, however erroneously the decision may have been arrived at on questions which arose entirely under the law of the State independent of the Constitution of the United States and of the United States laws, they will allow the decision to stand. This action of the Supreme Court prevents appeals to the Supreme Court of the United States being taken by simply suggesting a constitutional question in order to have the advantage of that court's reëxamination of the whole record, and if error be found to send it back to be corrected.

In cases, however, where the State itself is a party or so directly interested that the bias of the State court may be supposed to be in favor of the State's views as against the United States Constitution or the act of Congress, then the court will look into the record sufficiently to see whether the decision upon other points was not merely colorable, and not deem itself concluded by the facts as found by the court below ; in other words, whether the appellate jurisdiction of the Supreme Court applies in such a case or not is not to be determined for the Supreme Court by the findings of fact on the part of the lower court which would preclude its jurisdiction,

but the Supreme Court of the United States will itself examine into facts sufficiently to ascertain whether or not its jurisdiction attaches.

The Judiciary Act further provides for writs of *ne exeat* by the Supreme Court and circuit judges, and of writs of injunction by the supreme, circuit and district judges ; a limitation upon the power to issue writs of injunction to State courts except in cases of bankruptcy ; and for the sake of uniformity in the various districts and circuits of the United States, the laws of the several States, except where the Constitution of the United States and statutes of the United States otherwise require, are regarded as rules of decision at common law in the courts of the United States where they apply ; and a recent Judiciary Act has made even the forms of procedure in common law proceedings of the several State courts in the various districts where the courts sit, the forms of pleading and procedure of the United States courts.

Provision is made to prevent injustice by the dragging of persons out of the district in which they reside, by compelling plaintiffs, residents of the same State, to commence their actions within the district where the defendant resides, and all parties are permitted in the United States courts to manage their own cases personally or by counsel. The

Judiciary Act of 1789 makes ample provision for the issue of writs of *habeas corpus*, empowering and compelling all judges of the United States courts to issue this writ of privilege ; it gives an elaborate and detailed procedure for the return of the writ and the adjudications thereupon, and for appeals to circuit courts and Supreme Court of the United States, and stays all proceedings on the part of the State courts pending the consideration of the *habeas corpus* by the court below and the proceedings on appeal. Except in the Court of Claims the United States cannot involuntarily be made a party in a proceeding at law. The jurisdiction of the Court of Claims, as has been stated, is confined to claims founded upon any law of Congress or upon any regulation of an executive department, or upon any contract express or implied with the Government of the United States, and all claims which may specially be referred to it by either House of Congress ; all set-offs, counter-claims and claims for damages, whether liquidated or unliquidated on the part of the Government of the United States against any persons making claim against the Government in the courts.

By the acts of 1863, 1864, and 1868, the large claims arising from the seizure of cotton in the Southern States towards the close of the rebellion, were specially referred to the Court of Claims for

action. The lobbies of the Houses of Congress prior to the organization of the Court of Claims had been so beset by claimants that it was found necessary to organize a special tribunal to take into consideration some of the cases which prior to that time were constantly presented to Congress. As the court, however, is one of limited jurisdiction and as numerous cases of claims against the United States Government arise, of which the court has no jurisdiction, the committees of Congress are still besieged by claimants, and appropriations are annually made by acts based upon reports of committees in cases where such committees sit as a court of judicature determining upon contested claims against the United States. Such a committee lacks the dignity and power of an ordinary court of justice, is subjected to influences which courts of justice are not ordinarily subjected to, and has not the machinery of a trained bar and regular sessions and continuous investigations by means of which the truth is ascertained in courts of justice. Hence meritorious claims are overlooked and meretricious ones are so often paid through the instrumentality of Congress, that the question has recently been considerably agitated whether it would not be wiser to have the sovereignty of the United States Government sufficiently unbend as to allow it to be

sued in its own courts in the same manner as a private litigant.

Both before and shortly after the adoption of the Constitution it was subjected to very severe criticism on the ground that it did not contain a Bill of Rights. A careful examination of the first twelve amendments will show that they were mainly passed to satisfy that objection. The objection that was urged to their adoption was that they were unnecessary; that the Constitution begins with the declaration, "We, the people of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America;" that as the very purpose of the Constitution was to secure the blessings of liberty this declaration was, as Alexander Hamilton thought, a better recognition of popular rights than that which is contained in the elaborate declaration of rights in every State Constitution. It was, however, thought wiser to direct, enlighten and quicken public opinion as to the rights which were intended to be reserved to the people, and which were not intended to be delegated to the general Congress, that they be in terms so specifically declared that any infraction thereof would be immediately recognized as unconstitutional and void. The first amendment, which related to free-

dom of religion "was enacted under the solemn consciousness," says Story, "of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, and it was therefore deemed advisable to exclude from the national Government all power to act upon the subject. One of the reasons, too, for the necessity and wisdom of this course was the fact of the different religious complications of the majorities in different States. In some of the States the Catholics predominated; in others, Episcopalian; in others, Presbyterians; in others, Quakers; and any recognition on the part of the Government of any religion, except in the vaguest possible sort of way, would have given rise to considerable amount of jealousy and bickering."

The same amendment contains the security for freedom of the press and of speech. It is necessary to say that this security was not intended to give to any citizen an absolute right to speak or write or print whatever he saw fit without personal responsibility to the person aggrieved thereby. Every man was intended to have the right to speak and the right to print his opinions upon any subject whatever without any prior restraint by way of censorship; but if he injure any other person in his rights of person, property or reputation, he is

subject to civil and criminal prosecution for such injury precisely as he would be for any other injury to person or property. "Without such limitation," says Story, "it might become the scourge of the republic." The question how far the Government has the right to interfere with the press under the security thus afforded, and where licentiousness begins and liberty ends, is one which has often been mooted, but has not yet found a satisfactory solution. There is, however, much force in the contention that if the Government is to determine at any time what is liberty and what is license, then the constitutional provision is but a tissue of empty words, because every government, however autocratic, admits of certain strictures ; the question is simply as to where the line should be drawn. The sounder doctrine in the United States now seems to be this : that the Government cannot exercise a restraint upon publications ; in other words, no censorship of the press can be exercised under the constitutional guaranty that men may speak and write freely what they please ; and however dangerous and bad the doctrine may be which is being advocated or promulgated by the press, it is not within the power of the Government to prevent its publication. On the other hand if the press attacks private rights, calumniates individual char-

acter, or destroys domestic peace, it is responsible to the individual aggrieved both by criminal indictment for libel and by private prosecution for libel for the injury thus sustained. And the equity courts have power to restrain the intended publication of articles if they are injurious to private rights, and are not merely the discussion of a public question. Whether the United States Government can be forced to carry through the mails literature which is confessedly immoral, is a question which has not yet received final adjudication. Upon the instigation of the New York Society for the Suppression of Vice, the object of which is mainly directed against immoral publications, the United States Government has refused to carry certain libidinous and clearly immoral sheets. This refusal is of course destructive of the business of the publications, and as the refusal was generally accompanied by declining to redeliver the sheets in question, it practically amounted to a confiscation of private property. In the lower courts this course on the part of the Government has been held to be constitutional and proper, as it was in part the exercise of police surveillance and supervision, and no man's right to speak or write what he pleased was impaired by the refusal of the Government to carry such writings. The argument,

however, against this position is that as the general Government through its revenue laws maintains a postal department to which all are supposed equally to contribute, to deny the facility of the postal department is to impose in fact a punishment for a particular writing, and is thus an impairment of the freedom to publish, which was intended to be secured by the Constitution. The question will probably receive final adjudication by the Supreme Court before long. During the war of the rebellion, 1861–1865, several of the metropolitan papers were imposed upon by a forged proclamation of President Lincoln calling for an additional draft of four hundred thousand men, to repair the disasters to the Union arms. This pretended proclamation greatly intensified the feeling of despondency that had already taken possession of the people in the North at that particular juncture of the war. The newspapers publishing the proclamation were organs of the Democratic party, and were therefore subjects of suspicion on the part of the general Government. They were suspended by military orders, and a military force took possession of their premises and stopped for a short time the publication of these journals. The question of the right or authority of the Government in time of war so to suspend a paper was never judicially raised. The

order suspending them was recalled on the discovery by the Executive Department of the Government that the mistake was an innocent one and that it was not intended wilfully to embarrass the Government in its military operations, as it was wholly the consequence of an imposition. Under the authority of the case known as the Milligan case, decided in 1866, we are bound to assume that the Supreme Court of the United States would have declared such a suspension illegal and unwarranted by the Constitution at any point where the civil tribunals were in full force, even in time of war. At the theatre of war, of course, a different rule prevails ; but because a nation is at war every part thereof is not necessarily under the domination of the drum-head court-martial.

The right of the people peaceably to assemble and petition the Government for the redress of grievances is one which was borrowed from the Declaration and Bill of Rights in England with very little change in phraseology. No judicial opinions have ever been given upon this clause, because the right has never been denied.

The right of the States to have a militia, and the right of the people to keep and bear arms, is the subject of the following amendment. This is also substantially in the Bill of Rights of 1689. That this

provision simply means arms necessary for the militia and not to secure to each man the right to keep a private arsenal, goes without saying. That no soldier shall in time of peace be quartered in any house without the consent of the owner was to prevent the billeting of soldiers in time of peace upon the people. This amendment has in practice been found to be unnecessary. The army of the United States in time of peace is so small and the public property of the United States so vast that there is no necessity ever to billet soldiers upon the inhabitants. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and to prevent such searches and seizures, except upon due warrant issued by a court of justice, is one which would seem to be essential for the preservation of personal liberty, and has been twice assailed in the United States, once under the Alien and Sedition laws during the administration of Jefferson, and the second time during the war of the rebellion by the State and War Departments. In both cases the Executive Departments sought refuge under the principle of *salus populi suprema lex*; that the country was in peril and that it was necessary to disregard a single constitutional provision for the purpose of saving the whole structure.

The revenue laws of the United States contain many clauses of questionable authority by which revenue officers are entitled to search and seize books and papers of merchants and private citizens, and the question is not yet fully determined whether such inquisitorial proceedings and seizures are not, both in spirit and in letter, repugnant to this provision of the Constitution.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, is again a transcript of a clause of the Bill of Rights of the Revolution of 1688. This clause operates as a restriction upon the powers of the United States courts alone, and not upon the State courts.

The various amendments have from time to time been the subject of judicial decision, but the most important of the amendments are the last two of the first eleven, which are to the effect that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Were it not for this clause it might have been argued with considerable plausibility, that as the people saw fit, by amendments, to incorporate into the Constitution, a Bill of Rights, whatever they failed to preserve or mention they ceased to have. This provision was made to guard

against the evil suggested in the *Federalist* when it gave a reason why the Constitution had not given a Bill of Rights, because the reservation of powers without a Bill of Rights was larger than the reservation of powers with a Bill of Rights.

The next and last amendment of the first eleven is that the powers not delegated to the United States by the Constitution, nor prohibited to it by the Constitution, are reserved to the States respectively or to the people. This is a rule of interpretation of the Constitution which probably would have been followed by the courts without this express declaration. The Constitution is an instrument declaring limited and enumerated powers, and, therefore, whatever power is not given is withheld; but the declaration has been productive of much good, and took the matter of whether the United States is a government of merely delegated powers out of the range of controversy.

One great step in advance, however, must here be noted between the old Articles of Confederation and the Constitution of the United States, inasmuch as here the expression is "the powers not delegated to the United States by the Constitution," and in the Articles of Confederation it was "powers not *expressly* delegated or prohibited." Therefore, as a large proportion of the powers ex-

ercised by Congress arises from powers which it derives by necessary implication from the powers expressly conferred, the United States government differs in that respect from the Government under the Articles of Confederation, inasmuch as that had no power which had not been specially conferred, and therefore had no powers by implication. Hence it was crippled at every turn because the organic law which constituted it did not in express terms confer the right to pass a particular bill.

CHAPTER V.

THE POST-CONSTITUTIONAL HISTORY OF THE UNITED STATES.

THE foregoing chapters give a succinct statement of the provisions of the Constitution and of the leading questions that have been decided under that instrument. An understanding, however, of the institutional history of the United States would be incomplete if the political and constitutional questions entering into politics from the time of the adoption of the Constitution down to the present day were not sketched, in however superficial and rapid a form. The political divisions of parties in the United States unquestionably exerted a very strong influence upon judicial decisions and the interpretation of the provisions of the Constitution of the United States. There is an unconscious influence exercised by public opinion upon the minds of those who are called upon to decide finally constitutional questions, which is neither corrupt nor sinister, but which causes a written constitution to approximate more closely

to an unwritten one, like that of England, by making the written word bend and yield to the necessities of the hour, as a large and influential majority may determine, and that without constitutional amendment. The limits of this book do not permit so analytical a survey of the whole field as to show in detail the influence and pressure of public opinion upon the Supreme Court of the United States and the gradual yielding of the court to the pressure of that opinion, or the influence of the opinions held by the members of the court on political subjects upon their decisions as a court. The reader must make those applications for himself when the story of the political parties in the United States shall have been told.

It will be remembered that the Constitution came into existence under an almost irresistible pressure of necessity either to disestablish the Government of the United States and to leave each State free as an independent sovereignty to make such alliances as it might see fit—because the Articles of Confederation proved but a rope of sand—or to organize a Government clothed with sufficient power to enforce obedience to its laws ; with power to assess and collect revenue, with power to make war, treaties of peace and foreign alliances, and having both towards the States and as against foreign nations all the attri-

butes of sovereignty. The jealousy of the States, however, which caused the principal difficulty under the Articles of Confederation, and the ambition of local State leaders, who were apprehensive that the formation of the Constitution of the United States would be destructive of their influence, and who therefore opposed the Constitution even after its adoption, survived sufficiently to cause within an early period thereafter a renewal of hostility to the pact, no longer in the form of open opposition to the Union, but under the form of urging a strict and limited construction of the powers conferred upon the federal Government, and to make an exaggerated claim of sovereignty on the parts of the States.

Under the Constitution of the United States Washington was unanimously elected first President, and he so continued for the period of eight years, and probably would have continued to hold the office during the period of his life, if he had not voluntarily seen fit to withdraw at the end of his second term, presumably for the purpose of creating an example to limit the Presidential term, so that thereafter there should be a sufficiently frequent change of the Executive head of the Government to prevent future elections from being mere idle forms, and also to prevent a con-

solidation of power in the hands of the Executive, which long continuance in office would inevitably bring about.

During Washington's administration differences of opinion were held largely in abeyance. The commanding personal dignity of Washington and the complete confidence reposed in him by the body of the people, his unimpeachable personal character and his remarkable good sense and moderation, gave to the country during such first eight years that peace, quiet, and freedom from political agitation which were above all things needful for the purpose of establishing the Government, rehabilitating its financial condition which had become almost hopeless under the Confederation, placing foreign relations upon a sound footing, and allowing the people of the United States and its Government a tranquil growth unharassed by internal conflict.

The adoption itself of the Constitution was of course accompanied with considerable opposition. But ten States had adopted the Constitution at the time of the inauguration of the Government, and in some of the States the Constitution was adopted by but slight majorities. There were naturally, therefore, after the Constitution, as well as before, two parties—Federalist and Anti-Federalist—the lines

of which were, on the whole, retained after the Government was inaugurated. The Anti-Federalist party claimed, after the Constitution was adopted, as strong a loyalty to the government as the Federalist party itself, but the form of opposition it then adopted was to limit the general Government to the strict letter of its powers.

The first Congress met in the City of New York. The first questions that engrossed its attention after the adoption of the Constitution were the organization of the Judiciary, the revenue duties on imports and exports, as a system of taxation for the replenishment of the Treasury to carry on the necessary purposes of government. The discussion in Congress on the tariff laws shows that at the very outset the question of using the tariff as a means of protecting "infant" manufactures was one which entered into the method of formulating the legislation as part of the system. Fitzsimmons, of Pennsylvania, was mainly the author of the first tariff list. James Madison, although he owned himself, as he said in the debate, "the friend of a very free system of commerce, and that if industry and labor are left to take their own course, they will generally be directed to those objects which are most productive, and that, in a manner more conservative and direct than the wisdom of the most enlightened Legislature

could point out," nevertheless conceded (a concession which, by the light since thrown upon these questions by scientific research, appears to have been an error) that as to the navigation element of the tariff, if American citizens were left without restraint, and the law made no discrimination between vessels owned by citizens and those owned by foreigners, while other nations made such discrimination, such a policy would go to exclude American shipping from foreign ports. He conceded the necessity that every nation should have in itself the means of defence, and that in the period antedating the Constitution, establishments had grown up under the powers which those States had of regulating trade, which ought not to be allowed to perish in consequence of recent alterations, and as he was the leader of the House, his surrender to the idea of making protection an incidental consideration in the raising of the revenue of the United States engrafted that system upon the legislation of the country. A discrimination was imposed in favor of teas imported in American bottoms ; a tonnage duty was imposed, discriminating in favor of American products ; a discriminating duty on spirits was passed in favor of nations having commercial treaties with the United States. In the first Congress the slavery question made its earliest appearance

in the shape of a proposition, emanating from Mr. Parker, of Virginia, to insert a clause, imposing a duty of ten dollars on every slave imported, with a view of discouraging the slave trade. The motion was not agreed to, but the discussion which it raised, in which Madison took an important part, is interesting, as showing that at that time many of the Southern States were anxious to limit the growth of the slave power, and looked forward to the period when slavery might become entirely obliterated. The same Congress passed a Navigation law for the registering of American vessels; created a Coast Survey; organized Departments; and placed the power of appointment and removal in the hands of the President. The power of removal by the President was strongly opposed, and the measure conferring it passed the Senate only by the casting vote of the Vice-President, Mr. Adams. The discussions which preceded and accompanied the adoption of the Constitution by the various States, so unmistakably demonstrated the apprehensions of great masses of the people, that the Constitution was not sufficiently guarded by the declaration of the rights of the people, which were to be free from any possible impairment at the hands of authority, that Mr. Madison at once proposed amendments to lay those fears at rest, and the amendments which

have been the subject of consideration in the last chapter, were the result of this action. Jefferson's objections to the Constitution as it stood in 1789, were mainly met by the amendments, except the one in reference to which he was extremely strenuous, that the Executive shall not be reëligible to office. The important subject of the national debt was laid over until the following session for the purpose of receiving the report of the Secretary of the Treasury upon a plan for its liquidation. On the subject of the public lands nothing was done except to effect the passage of an act for the government of the Northwest territory. The most stormy debate of the session was upon the question of the permanent seat of the federal Government. The Southern members wanted a site on the Potomac; Pennsylvania wanted a return to Philadelphia, which had been the seat of the Continental Congress. The House agreed, as a matter of compromise, to fix the seat of Government on the Susquehanna. The bill came back from the Senate so altered as to substitute for the Susquehanna the district ten miles square adjoining Philadelphia. The House agreed to this, with a slight amendment which made it necessary to have the bill go back to the Senate; but by that time the dissatisfaction of the Southern members had made itself so apparent

that it was deemed wiser to lay the whole matter over to the following session.

The only important administrative question that characterized the first year of Washington's administration in addition to the mere selection of persons to fill the various offices, was the making of treaties with the Indian nations ; and as along the whole western frontier the Indian affairs were in a most unsettled state, it was necessary to take immediate measures to prevent a general outbreak among the Indians against the new Government. Washington appointed commissioners to treat with them, and these commissioners confirmed some of the old Indian treaties that had been made by the various States, and promised the Indians immunity from taxation and forcible prevention of settlers from trespassing upon their lands.

At the opening of the following session Alexander Hamilton, the Secretary of the Treasury, reported the debt due to the Court of France and to private individuals and foreign nations, something below twelve million dollars, and the domestic debt at \$42,500,000. The highest possible tone was adopted by Hamilton as to the obligation of the United States for the payment of the debt and the expediency of doing so, and not to lend ear to the suggestions which were made to scale

the debt because of the depreciated prices at which the then holders had bought up its evidences on speculation. The State debts arising out of the war, which were practically repudiated, made another addition of \$26,000,000. He proposed the funding of the debt at six per cent., and to receive in payment of the new bonds the evidences of the old debt, and to create a sinking fund from post-office proceeds for the gradual extinction of the new debt. The Continental paper money, which amounted nominally to \$200,000,000, had by the Continental Congress itself been reduced by a system of scaling at the rate of forty for one. There were \$78,000,000 of the Continental paper money yet outstanding, and it was intended not to disturb that reduction, but to accept the Continental paper money upon the basis of two and one-half cents on the dollar. It was finally agreed that the Government should pay the holders of the certificates of the United States the face thereof, and the question arose on the assumption of the State debts. This led to an extremely acrimonious debate, arising from the fact that some of the States had largely provided for the expenses of the war by taxation, while others ran recklessly into debt, and it was evidently unfair to the inhabitants of the States who had borne the burden of taxation during the

war for the purpose of preventing the accumulation of a debt, that they should be now called upon to pay the interest and eventually the principal of bonds representing the reckless issues of bills of credit by sister States, and thus to tax themselves for the freedom from taxation which their neighbors had enjoyed.

The plan of Hamilton finally prevailed on a very close vote. During the second year of the Union under the Constitution a bill was passed to locate the seat of Government for ten years at Philadelphia, and thereafter permanently on the Potomac. This measure was passed only by combining therewith the assumption of the State debts, as a compromise measure. During the third year of Washington's administration a division arose in the Cabinet, which subsequently resulted in a party division on the bill to incorporate the Bank of the United States. Jefferson and Madison were of the conviction that it was an unconstitutional measure and had a tendency to corrupt the powers of government. Hamilton and Knox, members of the Cabinet, gave their written opinions in favor of the President signing the bill. Randolph was also opposed to it. It is fair to say, however, that the Republican party, which subsequently became the Democratic-Republican, and later the Democratic party, drew considerable accession of strength from

the Federalist party in process of time, because the loyalty of the Republican party to the Constitution since its adoption could scarcely be questioned. Opposition to the Constitution itself had well-nigh died out. There was room and reason, however, for the existence of a party of strict constructionists of the powers conferred, actuated by a strong determination to confine in every possible way the Federal party within the limits of federal power and to assert the local rights of States as to all matters not conferred by the Constitution to federal control. The firm conviction had taken root in the minds of many able men in the United States, of whom Jefferson was the leader, that State organizations were the only means by which the liberty of the citizen could be preserved, and that a nation of the territorial extent and diversity of interests of the United States would in time become a centralized power sufficiently strong to crush out individual liberty unless there existed in the form of States *quasi* independent governments — as *imperia in imperio* sufficiently powerful to oppose a barrier against any encroachment of the central Government.

During the administration of Washington, the divergence of the ideas represented by Thomas Jefferson and those represented by Alexander

Hamilton, became more and more marked, so that on December 31, 1793, Jefferson felt constrained to retire from Washington's Cabinet. During part of the time of Washington's administration, the relations towards both France and England had become critical, but Washington's tact overcame the difficulties ; and the causes of irritation, although not entirely removed, were for the time being suppressed. Washington refusing to be a candidate for a third term, caused the election, in 1796, of John Adams and Thomas Jefferson as respectively President and Vice-President of the United States. It will be remembered that the election was then held before the new amendment took effect under the original clause of the Constitution, by which both great parties in the United States were substantially represented in the offices respectively of President and Vice-President ; because under the original clause he who had the largest number of votes became President, and the one next in number became Vice-President. Therefore, Adams, representing the Federalist party, became President of the United States, and Thomas Jefferson, who was then the leader of the Republican party, became the Vice-President. Madison, who had heretofore acted between the two parties, became at that time, with Jefferson, one of the

leaders of the Republican party. During Adams' administration the party lines became more closely drawn, and there was considerable accession of strength to the Republican party as measure after measure was introduced and debated, which seemed to indicate a centralization of political power. Another of the reasons why the Republican party grew in strength about that period, was, that there were incessant petitions for the abolition of slavery introduced in Congress, and whilst Congress protested in several instances that it had no right to interfere with domestic slavery in the United States, the Southern and Middle States felt that their safety against the ultimate interference in that particular by the United States Government rested upon the general acceptance of the States rights doctrine insisted upon by the Republican leaders.

During the first year of Adams' administration (1797) affairs with France became complicated by reason of the war then waging between France and England, in which France insisted that America, her former ally, should, if not openly aid the French republic, at least take a position of armed neutrality as against England. The decrees of the French republic which injuriously affected American commerce led to a rupture of diplomatic relations, and caused, in the following year, the

passage of the Alien and Sedition laws, the Alien law empowering the President to expel such persons as he might find who were plotting against the public peace, and the Sedition act being designed to restrict the freedom of speech and liberty of the press. The passage of these measures by the Federal party added to its unpopularity. The desire on the part of the people of the United States to preserve peace, caused them to look with grave suspicion upon the active preparations which were then made for war. In the year 1800 a condition of irritation, almost of war, already existed between France and the United States. But with the dissolution of the French Directory in 1799, and the accession of Napoleon as First Consul of the French republic, a treaty was soon concluded. The year 1800 also witnessed the first caucus nomination for Presidential candidates in the United States under the Constitution. In 1800 an election took place for President of the United States, to take the place of Adams. When the electoral votes were counted, in February of the following year, it was found that no election had taken place, as Aaron Burr and Thomas Jefferson had an equal number of votes, and the choice under the Constitution devolved on the House of Representatives, which, on the thirty-sixth ballot, elected Mr. Jefferson President.

A breach had taken place between the two great leaders of the Federal party, Adams and Hamilton, immediately prior to the election of Jefferson, which weakened the Federal party considerably, and caused the success of the Republicans. During this contest between Jefferson and Burr for the Presidency, each one having had seventy-three votes in the Electoral College, Hamilton cast his influence in favor of Jefferson and led to his election. This and subsequent acrimonious contests between Hamilton and Burr, caused the unfortunate duel between them in 1804, which cost Hamilton his life.

The dangers to the country which this struggle for the Presidency disclosed, led to the adoption of the twelfth amendment, by which the President and Vice-President are voted for by the Electoral College separately on distinct lists, and each independently of the other.

Jefferson introduced, when Congress met after his election, the innovation to send a message to Congress instead of opening Congress in person. It savored too much of British forms for the President to open Congress in person, and hence the Republican party, to show its contempt for monarchical institutions, adopted, through the instrumentality of Jefferson, the form which has since been followed by every President of the United

States, of not meeting Congress in person, but of sending messages, as from time to time his views to Congress are to be expressed.

The leading incident of Jefferson's first few years of administration was the purchase of Louisiana from Napoleon for \$15,000,000. Louisiana as then ceded was a territory out of which ten States (inclusive of what is now known as Louisiana), three Territories, and a large part of two other States have since been carved.

Jefferson continued in office during two terms, at the end of which the electoral votes were cast for James Madison and George Clinton. This was again a Republican triumph. As early as 1805 the Federal party was reduced to seven senators and twenty-five members of the House. The parties divided on the Embargo Act, and already what subsequently developed into a war with Great Britain, arising from the impressment of American seamen and interference with American ships, was looming up, as it was claimed that in the war between England and France, almost six thousand American seamen had been impressed into the British navy. The embargo was intended as an act of retaliation against both England and France for the mischievous effect upon American commerce of the Milan-Berlin decrees and the British Orders in Council.

During the administration of Madison war was declared against England on the 18th of June, 1812, which lasted until December 24th, 1814, when a treaty of peace was signed at Ghent, although the actual hostilities continued until February, 1815, when the news of the signing of a treaty first reached America.

During the war the Federal party fell into utter confusion and disgrace in consequence of its opposition to the war and because of the call of the convention known as the Hartford Convention, in which some of the New England federalists strongly announced, through their representatives there, the theory of secession, if the war should be prosecuted much longer, as it was claimed that the war was destructive of the interests of the Eastern States, while it but remotely affected the Middle and Western States. The successful termination of the war strengthened the Republican, or Republican-Democratic party, as it was then called, to such a degree that it dominated in almost every State in the Union. The result of the war was the swelling of the debt to more than \$127,000,000, but the moral results from it were on the whole beneficial, because the gallantry with which the navy was handled, and the battle of New Orleans, fought under General Jackson on the American side, gave to the American

people a degree of self-reliance which largely developed the growth of a spirit of national feeling in the United States.

The charter of the Bank of the United States having expired in 1811, it was reorganized in 1816, with a capital of \$35,000,000. Within a comparatively short period the method of its administration produced a speculative era which brought in its train a financial crisis and distress.

The main political questions which agitated the people of the United States during the period of Madison's administration concerning the relations of the United States with England were war or anti-war before the war broke out, and a vigorous prosecution of the war or a discontinuance of it whilst it was in operation. It was during the latter part of this period that Webster made his first appearance in the Congress of the United States, and commanded immediate attention by his eloquence and talent for debate.

At the close of Madison's administration the thirteen States of the Union had already grown into nineteen, the population of 4,000,000 had grown to almost 10,000,000, and the House of Representatives had grown to a body of 213 members.

In 1816 James Monroe, the Republican-Democratic candidate, was elected President. The second

year of Monroe's administration witnessed the commencement of the struggle on the slavery question between the Northern and the Southern States, which culminated in the War of the Rebellion in 1861. On the bill to authorize the people of the Territory of Missouri to form a constitution and State government, and for its admission into the Union, Mr. Talmage, of New York, offered the following proviso: "Provided that the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes whereof the party shall have been convicted, and that all children born within said State after the admission thereof into the Union shall be free at the age of 25 years." This raised a storm, which was only quieted for a time in the year following by the Missouri Compromise. This came about by an attempt to pass the bills to admit Missouri and Maine as States together, in one bill, restricting slavery in them. The measure which was passed eventually was the prohibition of slavery from the rest of the Louisiana accession north of the 36° 30' north latitude. During this year Florida was ceded by Spain, and the eastern boundary of Mexico was fixed at the Sabine River, thus transferring Texas, which was debatable ground as to whether or not it came to the United States with the Louisiana

purchase, to Spanish rule as part of the negotiation which resulted in the Florida purchase. The actual exchange of ratifications, however, did not take place until 1821. In 1821 Monroe entered upon his second term. During that year the Missouri struggle came up again on the application of Missouri for admission, after the passage by her of a State Constitution. During that year Henry Clay, by reason of his great services as pacifier between the North and the South, became a recognized leader in American politics.

The message of Monroe to Congress in 1823 announced for the first time the doctrine of opposition on the part of the United States to intervention on the part of European governments in the affairs of states and governments other than the United States on the North American continent, claiming a sort of protectorate in that particular for the United States, at least in so far as to insist against non-intervention of European powers in the affairs of governments on the North American continent. This doctrine has become known as the "Monroe doctrine," and was expressed in these terms: "We owe it, therefore, to candor and to amicable relations existing between the United States and those powers (the European powers) to declare that we shall consider any

attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered, but with the Governments which have declared their independence, we have, on great consideration, and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny as any other than an unfriendly disposition towards the United States." This was called out by what was supposed to be the design of the Holy Alliance to extend a fostering care to the young American republics of Spanish origin.

The year 1824 witnessed the first sectional struggle upon the tariff question, the North and Middle States voting in favor of a protective tariff, the South voting solidly against it.

At the end of Monroe's administration the public debt had been reduced from \$123,000,000 to \$90,000,000, and the country was in a state of remarkable prosperity.

In the autumn of 1825 John Quincy Adams, a Republican, was elected President of the United States by the House of Representatives, in con-

sequence of a failure to elect by the Electoral College. John C. Calhoun was elected Vice-President.

An attempt was made during the early years of President Adams' administration to amend the Constitution as to the mode of electing the President of the United States by having him elected directly by the people in Congressional districts. Although the proposition met with approval in both branches of the Federal Legislature, it failed to obtain the necessary two-thirds vote in both branches, and therefore no further steps were taken.

In February, 1826, the republics of South America made a proposition to the United States to deliberate with them upon measures for common advantage, at a Congress to be held at Panama. This led to serious opposition on the part of the South, for the reason that as some of the South American republics had recognized the equality of the negro by admitting him to citizenship, it was, as they claimed, an indirect way of recognizing negroes as citizens. The debate upon this proposition intensified the feeling in Congress on the slavery question, and was the clearest possible demonstration that the Missouri Compromise, which was intended forever to allay all bitterness upon

this subject, fell short of what was expected from it. The feeling of mutual distrust between the Northern and Southern States was still further increased by the tariff legislation of 1828. The duties were made higher, and the people of South Carolina petitioned their Legislature "to save them if possible from the conjoint grasp of usurpation and poverty." They declared that the citizens of South Carolina would be condemned to work as tributaries of the Northern and Middle sections of the Union under such tariff legislation. The Legislature of Georgia protested against the tariff act in 1829, and the Legislature of South Carolina during the same year made a solemn protest against the same measure.

Andrew Jackson was elected President of the United States in 1828, with Calhoun again as Vice-President during his first term, and Martin Van Buren as Vice-President during his second term. General Jackson in his inaugural address stated that the popular sentiment declared in a manner too legible to be overlooked, the task of reform to be the duty of the administration. This, as interpreted in practice, meant that he was to remove the office-holders of the former administration, and during the first year of his administration he made upwards of seven hundred removals from office on

political grounds, without including subordinate clerks, whereas during the forty years preceding there had been but sixty-four removals. This system of wholesale removal, not on the ground of the unfitness of the occupant for the position, but because his views were not entirely in harmony with the administration, on matters which but remotely, if at all, affected the duties of his office, inaugurated the "spoils" system in American politics. Subsequently upon every change of Presidential incumbents, by the election of chiefs of party differing from the party then in power, a decapitation of public officials took place, so that it became an accepted principle as to tenure of office in the United States, that appointments were for the four years only during which the President was elected, and whether the appointment was to continue thereafter depended entirely upon the accident whether there would either be a subsequent term for the same Presidential incumbent, or whether the same party would remain in power, and therefore the same influences which caused the appointment could be kept at work to continue the incumbent in his position.

In his very first message to Congress General Jackson recommended an amendment to the Constitution, giving to the people the direct election

of the President. No steps, however, were taken by Congress to submit that question for ratification to the people.

The nullification doctrines, by which is meant the doctrine of the right of the States to refuse obedience to laws of the United States when they are supposed to be inimical to their interests, were openly avowed by some of the Southern States, notably South Carolina, and by the then Vice-President of the United States. Mr. Calhoun was the recognized chief of the party of nullification, and gave to it whatever intellectual impulse and theoretical basis it had. The feeling between President Jackson and the Vice-President upon this subject became so marked, that in March, 1831, the entire Cabinet, with the exception of the Postmaster-General, resigned.

The charter of the United States Bank once more expiring by limitation, the President of the United States took a determined stand against its renewal. In his annual message, he said: "Nothing has occurred to lessen in any degree the dangers which many of our citizens apprehend from that institution as at present organized." 1831 also witnessed the organization of the Mormon settlement at Kirtland, and also in Missouri.

During the session of 1832 the Senate and House

of Representatives passed a bill to re-charter the bank of the United States, but the President vetoed it, and the vote of two-thirds of both branches could not be obtained to pass the act over the President's veto.

In November of the same year, South Carolina passed an act to nullify the tariff bill of Congress on the ground that it was an unconstitutional measure, and in December of the same year, the President issued a proclamation to warn the citizens of South Carolina from engaging in acts of resistance, sent troops to Charleston under General Scott to enforce the laws, and stated in his declaration that if South Carolina could nullify the revenue laws of the United States, every other State could do so, and therefore no revenue could by any possibility be collected, as all imposts must be equal. In January following, President Jackson published his nullification message, and there was danger of an immediate conflict between the State of South Carolina and the United States Government, which was avoided only by a compromise on a modification of the tariff of 1828; the duties were annually reduced one-tenth for seven years, at the end of which time all of the excess of the duties above twenty per cent. should be equally divided into two parts, and one part struck off at the

end of one year and the other at the end of the following year ; so that at the end of nine years all duties should be reduced to twenty per cent. on value. It was declared that this act was to be permanent. The bill passed both Houses, and allayed the discontent, and prevented at that time the necessity for resort to arms.

During the recess of Congress, after his inauguration for the second time in 1833, Jackson removed the deposits from the United States Bank. This caused the bank, as a matter of retaliation, to contract its loans, which in turn, with other causes, produced a commercial crisis, and great financial distress, which continued down to 1838. In the interval, the United States Bank suspended payment, and finally became insolvent.

During Jackson's administration there were three parties in the United States : the Democratic, of which Jackson was at the head ; the Anti-Masonic, and the National Republican.

The old Republican party had before that time changed its name to the Democratic party, and was technically known as the Democratic-Republican party, by which name it has preserved its organization down to the present time.

Martin Van Buren became the nominee of the Democratic party towards the end of the Jackson

administration, and then for the first time the Whig party made its appearance as an offshoot of the National Republican party—the name Whig, for the last named party, appeared for the first time in an election in 1834.

During the administration of Jackson the United States debt was substantially extinguished. When his administration commenced the public debt amounted to \$58,500,000, and when it ended it amounted to but \$291,089. The debt was not wholly extinguished, simply because the bonds were not handed in for payment. The exports of the United States had risen from \$72,000,000 to \$128,000,000, at the end of his administration, and the imports from \$74,000,000 to \$190,000,000.

The division of parties at this time arose mainly from the difference of construction of the powers of the United States Government, and was in another form the continuation of the struggle which commenced before the Constitution of the United States was framed, between the powers of the States and of the United States, and after it was adopted the contest continued upon the construction to be given to the Constitution of the United States. It will be remembered that at the time of the formation of the Constitution a large proportion of the leading and influential citizens of

the country were opposed to the merging of the State sovereignties into that of the United States under the form in which this was accomplished by the Constitution of the United States. After the Constitution was adopted and the power of the United States grew both at home and abroad, and the prosperity of the community developed, this form of opposition was entirely extinguished, but was transmitted into a strict construction of the Constitutional powers granted. When the Republican party, however, came into power, the Federalists or Loose Constructionists, for the purpose of limiting the power of their opponents, found themselves in a position to be compelled to adopt almost wholly the language of their former opponents, and thus strangely enough became the Strict Constructionists, in the earlier period of the Republican success under Jefferson to the extent that in the Hartford Convention they asserted in as radical a form as was subsequently asserted by some of the Southern States, the right of the States to nullify Congressional legislation if they deemed it unconstitutional. The success of the war of 1812 caused the Federalist party so utterly to fall into disgrace that it became extinguished as a party organization. The desire to use the credit of the United States for purposes of internal improvement, and the growing influence of

the manufacturing classes, caused a new organization—the Whig organization—to arise, which again in its tenets and its tendencies resembled the Federal party. They claimed the right to use the funds of the Union for purposes of internal improvements, and to have the United States subscribe or loan its credit for the purpose of internal improvements in various States, and to use the revenue system of the United States for the purpose of encouraging domestic manufactures, to grant subsidies and to build up manufacturing industries of the nation at the expense of the commercial and agricultural interests.

At the time of the inauguration of Martin Van Buren as President of the United States, the contest which theretofore had been carried on between Congress and the President, by the passage of bills favoring internal improvements and which were vetoed by the President, continued, so that at the time of the opening of the 13th administration the lines between the Whigs and Democrats were closely drawn upon those questions. Van Buren's administration began under circumstances of extreme financial distress. Excessive issues of paper money had caused reckless speculation and raised the prices of lands far beyond their actual value, and the sudden calling in of loans in the spring of 1837

resulted in a suspension of specie payments by the banks which precipitated a commercial and financial panic of the utmost severity. The President then for the first time recommended a plan of sub-treasury deposits, for the purpose of preventing at any future time a further copartnership between the Government and the banks, and to have for the Government substantially its own depository and disbursing agents throughout the United States. In 1840, by a small majority, this independent treasury scheme became successful; but indications were already but too abundant that the Whig party, making capital of the financial and commercial distresses of the Van Buren administration, and attributing it largely to the fact that the Government refused to lend its aid to internal improvements, and that it had bankrupted the banks in consequence of the organization of the independent treasury plan, was gaining ground in the United States, and would probably obtain control of the Government at the next Presidential election. In 1839 the Abolitionist, or Anti-Slavery party, made, for the first time, Presidential nominations. At the Presidential election in November the Whig electors were elected throughout the United States, except in two Northern and five Southern States. In these the Democratic electors were chosen. The nominees

of the Whig party, Gen. Harrison and John Tyler, were elected respectively President and Vice-President of the United States. Just one month after his inauguration, President Harrison died. This was the first time that a President died in office, and the Vice-President, John Tyler, under the Constitution became the chief Executive officer for the unexpired term. Mr. Tyler was known at the time of the election not to be strongly in sympathy with the Whig party, and he was placed upon the ticket as a matter of concession to the Southern element and with the view of catching Democratic votes. The breach between him and the party that elected him was precipitated almost immediately after his accession to the Presidential chair, by his veto of the bill to incorporate the fiscal bank of the United States.

The Whig party had succeeded in the presidential election, upon the platform of the reëstablishment of a national bank and its promise to pass internal improvement bills. The veto of the bill caused a conference between the President and the leaders of the House and of the Senate, to bring about an agreement as to a bill that he would consent to. Such a bill was drawn, and it was claimed that it received the approval of the President; but after its passage he vetoed it, in consequence of which his

whole Cabinet, with the exception of Mr. Webster, resigned. The President was then thrown entirely into the hands of the Democratic party, and the Whigs who had the majority in Congress, regarded him as an antagonistic and democratic President.

The northeastern boundary controversy, which was at that time one of the questions in dispute between America and Great Britain, was adjusted between Lord Ashburton and Webster by the treaty known as the Ashburton treaty, in 1842.

During the years 1843 and 1844 the annexation of Texas became an important party question. The South, apprehensive of the development of population in the northwestern territory and the rapid formation of free States, which threatened to endanger the system of slavery, determined with the aid of the President to extend its territory in the southwest and to annex Texas —out of which many States could be carved—to the United States. Texas had been in part settled by adventurers from the States. Its original Spanish population was largely merged by intermarriage with Americans, and many of the Mexicans were driven back toward the Rio Grande. On the 2d of March, 1845, the bill to annex Texas was finally passed. Florida was

also admitted as a State, thus adding to the slave power.

In November, 1844, James K. Polk was elected President of the United States, he being a Democratic candidate, and George M. Dallas Vice-President. The newly-elected President, on taking his seat, committed himself fully to the policy of Tyler with reference to Texas, and immediately ordered possession to be taken of the territory by the troops of the United States. General Taylor took command, and pushed its occupation almost to the Rio Grande. Without any formal declaration of war, a conflict was precipitated between the Mexican troops and the American troops, and in the midst of the excitement arising from the news of this clash of arms between the Mexican troops and the United States army, in which the army of the United States proved successful, Congress declared that a state of war existed between the United States and Mexico, and was called upon to make the necessary appropriation for carrying it on with effect. The army of occupation was then superseded by an army under General Scott, to take possession of the City of Mexico itself, and after a series of uninterrupted victories, Mexico was captured and peace dictated. A treaty was formed between the Mexican Congress and the American Commissioners, by which the

independence of Texas was recognized and its annexation to the United States confirmed. This extended the territory of the United States on the southwest to the Rio Grande River from El Paso to its mouth. In addition to this, the territory of New Mexico and Upper California was ceded. For this cession of additional territory the United States paid Mexico \$15,000,000, and assumed the payment of some \$3,500,000 due to Mexico from certain citizens of the United States. By a subsequent purchase, for \$10,000,000 more, known as the Gadsden purchase, an additional territory was acquired.

During the period of the war with Mexico for the acquisition of Texas, the Anti-Slavery party, in consequence of the aggressive spirit shown by the South, and the determination to extend the slavery territory, became more and more formidable, and on the debate on the Wilmot proviso—a provision to prohibit slavery from all territory to be acquired from Mexico—it was apparent that a considerable accession of strength to the anti-slavery element had already been made among the United States representatives.

The tariff struggles, the war with Mexico, and the question of the limitation of slavery in the newly acquired territory, in all of which the South prevailed, were the main political questions which

divided parties during the Polk administration. In 1846, the Oregon question was settled by a treaty with England, by which the boundary line was fixed at 49° north latitude, instead of $54^{\circ} 40'$, as originally claimed by the United States. In 1848, the Democratic party nominated Lewis Cass for President, and Benj. F. Butler for Vice-President. The Whig national convention nominated as the candidate for President Gen. Zachary Taylor, who divided the honors of the brilliant success of the Mexican war with Gen. Scott, and Millard Fillmore, as candidate for Vice-President. The parties, as declared in their platforms at that time, divided on the free trade and protection question, the Democratic party insisting that no more revenue should be raised than is required to defray the necessary expenses of the Government ; that justice and sound policy forbade the federal Government to foster one branch of industry to the detriment of another, and that Congress had no power under the Constitution to interfere with or control the question of slavery ; on the other hand, the Whig party, at a ratification meeting held in Philadelphia, claimed as a part of its fundamental principles, no extension of slave territory by conquest ; protection to American industry, and the loan of the credit of the United States for the purpose of internal improvements. An offshoot of the Democratic party, known

as the Free Soil party, at the same time nominated Martin Van Buren as President, and Gen. Dodge of Wisconsin as Vice-President. Gen. Dodge declining Charles F. Adams was selected in his place. Its division from the Democratic party arose mainly on the question of extension of slavery to the territories ; they agreed with the Whigs upon the question of river and harbor improvements, that they were objects of national concern, and that it was the duty of Congress, in the exercise of its constitutional power, to provide therefor. In this triangular fight, the Whigs succeeded in electing their President, and consequently Gen. Taylor, of Louisiana, and Millard Fillmore, of New York, were respectively inaugurated on the 4th of March 1849, President and Vice-President of the United States.

The total population of the United States at that time was a little upwards of 23,000,000. The acquisition of new territory by the United States Government reopened the old Missouri Compromise question, and it was resolved, mainly through the instrumentality of the Southern leaders that the territories should themselves determine whether or not they should recognize slavery or prohibit it within their own borders, in the event of their becoming States. This right was known as "squat-

ter sovereignty." The newly arrived immigrant in any territory, usually occupying lands of the United States which by improvements became his own under the laws of the United States, was known as a "squatter." The South calculated upon the superior activity of its own people, and somewhat upon their aggressiveness, to hold in awe and check the more peaceably inclined settlers from the Eastern States and from Europe, and that by the terrorism that thus could be exercised they could secure a large proportion not only of new States closely contiguous to the territory of the old slave States, but also invade some of the Northwestern territory, and thus prevent the power of free States from spreading in that direction. The first shock of disappointment to this calculation came through the finding of gold in California. This caused a migration from the Eastern States to the Pacific coast of so many strong and fearless men that, within the very territory that the Southern leaders supposed to be their own, and which would have been devoted to slavery by law under the old Missouri Compromise had it not been repealed by the votes of the Southern Congressmen, the establishment of slavery was utterly outvoted and routed. California made application as a free State, by a majority so overwhelming that its admission in 1850 could not be rejected by the then pro-slavery

Congress of the United States. However, the Southern feeling of disappointment at the result of this mistaken calculation, together with the suspicion that it had been largely due to the rapid accession of strength of the Anti-slavery party both in numbers and in influence, caused another compromise bill to be passed in the interest of slavery, by which it was agreed to form the Territories of Utah and New Mexico without any reference to slavery, to admit California as a free State, and to pay Texas \$10,000,000 for the surrender of its claims to the Territory of New Mexico. A most stringent bill was also passed to return fugitives from justice and persons escaping from the service of their masters. The slavery question entered upon a new phase on the introduction of a bill to organize the Territory of Nebraska in February, 1853. During the few years intervening from 1850 to 1853 great bitterness arose in some of the Northern States on the subject of the Fugitive Slave bill. The provisions of the bill gave to United States commissioners the power, without judge or jury, to return fugitives from justice, and prohibited State courts from issuing writs of *habeas corpus* for the purpose of testing the question of the right to the return of the claimed fugitive, denying to the States the right to try the title of the master to the

slave. Some of the States refused to enforce the law, notably Massachusetts, and even passed laws to prohibit its enforcement. When the political parties met in 1852 the question of slavery was the main one before them. Both the Whig and Democratic parties vied with each other in assurances to protect slavery within the States, the Democratic party declaring that Congress had no power under the Constitution to control this "domestic institution" of the Southern States, and that all the efforts of the Abolitionists to induce Congress to interfere with questions of slavery had a tendency to diminish the happiness of the people and endanger the stability and permanency of the Union, and they pledged themselves to abide by and faithfully execute the acts known as the Compromise measure settled by Congress, and more especially the Fugitive Slave act. The Whig convention declared that the series of acts of the Thirty-second Congress, known as the Fugitive Slave law, are received and acquiesced in by the Whig party in the United States as a settlement in principle and substance of the dangerous and exciting questions which they embrace, and they promised that so far as they were concerned they would maintain them and insist upon the strict enforcement thereof. Therefore, upon the main question of slavery, the Demo-

cratic and Whig parties, the two leading parties, expressed almost in the same terms their determination to carry out faithfully the Compromise measures of 1850, and to enforce the Fugitive Slave law. The only protest of any national party against this subserviency to the slave power came from the Free Soil Democracy, which nominated Mr. Hale, of New Hampshire, and Mr. Julian, of Indiana, respectively for President and Vice-President, and in their platform declared that the Fugitive Slave laws were repugnant to the Constitution, to the spirit of Christianity, and to the sentiment of the civilized world. They insisted that no permanent settlement of the slavery question could be looked for except in the practical recognition of the truth that slavery is sectional and freedom national. The Democratic party, in 1852, succeeded in electing its President by an overwhelming majority, and Franklin Pierce and William R. King, the nominees of that party, were inaugurated on March 4th, 1853, respectively as President and Vice-President of the United States.

During the early part of President Pierce's administration, the organization of Kansas and Nebraska as Territories was the all-absorbing subject of discussion. The proximity of Missouri to both of those territories, Missouri being a slave

State, made the Southern people feel themselves secure that they could control the organization of the Territories if to the Territories were left the determination of the question of slavery or not within their limits, and a large number of pretended settlers, known as border ruffians, immediately migrated from Missouri into Kansas and Nebraska, and organized a territorial government in favor of slavery.

The bill abrogating the Missouri Compromise of 1820, known as the Kansas-Nebraska bill, was passed in May, 1854, and for several years the so-called "Kansas war" was carried on between the partisans of slavery and anti-slavery—a war not merely in name, but which involved considerable bloodshed. Congress recognized the pro-slavery territorial constitution, known as the Leavenworth Constitution, and the Governors who were appointed by President Pierce were appointed with the view to influence these Territories to carry out the pro-slavery programme by the adoption of pro-slavery Constitutions for their admission as States.

During 1854 the claim was made that the Compromise bill of 1850 had abolished the compromise of 1820, and that therefore the new States to be admitted north of the Missouri line could be invaded by the slave power as well as those south of the Missouri line. The debates during Pierce's admin-

istration in Congress resulted in a division between Northern and Southern Whigs, the Northern Whigs calling themselves anti-Nebraska men. The Northern Democrats were evenly divided on the Kansas-Nebraska measure, and the Southern Democrats acted as a unit. During the same period a new party came into existence, known as the Know-Nothings, which was subsequently called the American party. As its name indicates, it was opposed to elevating to office any but natural born American citizens, or those who had lived long in the country. It was strongly anti-Catholic in feeling. For a short time it became a national party, and in 1855 carried nine of the State elections, and in 1856 nominated Presidential candidates. In 1856, the anti-Nebraska party adopted the name of the Republican party. It was largely composed of the elements of the Whig party. Almost the whole of the Northern Whig element entered into it, and it obtained considerable accession of strength from the Democratic party, as it was the only formidable organization which resisted at that time the demands of the slave power as to the spread of slavery into the new Territories.

The conflict in Kansas created a very considerable amount of bitter feeling throughout the United States, more especially in the Eastern States, where-

in the cry of "bleeding Kansas" caused a large amount of money to be collected, which was expended in arms, and sent to the settlers of Kansas and Nebraska. The Territory of Kansas was divided into a pro-slavery and a free State division, and on the 5th of September, 1855, a convention at Topeka repudiated all that had been done in favor of slavery, claimed that it was the act and deed of Missourians alone, and determined to form a State government in the interest of freedom. In 1856 the free State settlers elected State officers under the Topeka Constitution. President Pierce, however, recognized the pro-slavery Legislature, and placed United States troops under the orders of the Governor to enforce the pro-slavery laws of the territory.

During the discussions on the Kansas question in Congress Senator Sumner, the leading Senator from Massachusetts, made a speech which was deemed personally offensive to Senator Butler, of South Carolina, and a representative by the name of Brooks, also from South Carolina, struck Senator Sumner with a cane, whilst he was seated in his chair in the Senate, with such violence that the Senator suffered several years from the effects of the blow. This incident naturally increased the bitterness between the two sections.

Pending the struggle in Kansas a new election

for President of the United States was held, under which again the Democratic party was successful. James Buchanan, of Pennsylvania, and John C. Breckenridge, of Kentucky, were respectively elected President and Vice-President of the United States, and took their oaths of office on the 4th of March, 1857. Within a few days after the election of President Buchanan, the Supreme Court of the United States, in the Dred Scott case, decided that negroes had no rights or privileges but such as those that the political power of the government might choose to grant to them, and that Congress had no more right to prohibit the carrying of slaves into any State or Territory than it had to prohibit the carrying of horses or other property, whose secured possession was guaranteed by the Constitution. The dissenting justices, on the other hand, claimed that it was only by State laws that the negro was made property, but by the law of nature and of nations, and even by the Constitution of the United States, there was no recognition of the slave as property, and that it was only by virtue of municipal law, the authority of which was confined to the territorial boundary of the State, that any human being could be regarded as property, and the rights of the owner were limited to the territory where this special kind of property

was recognized. This decision startled the Northern people of the United States, and a renewed effort was made to wrest Kansas and Nebraska from the slave power. The South knew that if in this struggle Kansas and Nebraska were taken from them, their hopes successfully to compete against the Northern States, and to maintain the slave power rested either in the acquisition of Cuba by the Union as a territory out of which to form new States, the annexation of part of Mexico, or the whole of it, so as to carve out new slave States, or, on secession from the Union, and the organization of an independent government in which slavery could be secured from every possible attack.

The Kansas struggle lasted until after the election of Mr. Lincoln as President of the United States. Two constitutions had been passed in Kansas, one known as the Lecompton Constitution, with slavery, which claimed to have 6,000 majority; but the free State settlers refused to vote on the ground that they were not permitted to vote against the Constitution, the only form of ballot being one either for the Constitution with slavery or for the Constitution without slavery. The President of the Senate insisted upon the admission of Kansas as a slave State. The House was willing to admit Kansas with the proviso that the Constitution should

again be submitted to the popular vote. No agreement was arrived at, and some time in 1859 a new Constitution was submitted to the people in Kansas known as the Wyandotte Constitution, which prohibited slavery, and received a majority of 4,000 in its favor.

The Kansas struggle, lasting as it did through the whole of Buchanan's administration, caused party lines to divide sharply in 1860 upon the question of slavery. All other questions were merged in that all-important one. The Southern States, although they had control of the General Government, felt themselves beaten at every point by the growth of a popular sentiment against slavery which proved superior to their astuteness as politicians, and superior to the influence exercised by the more militant character of their population, aided by threats of secession and war in the event of the failure on the part of the North completely to submit to their dictates. Although they succeeded in forcing measures through Congress, they were visibly gradually losing strength. The Democratic party met in Charleston, South Carolina, on the 23d of April, 1860, and divided there into two wings. At this distance of time the difference between the two wings of the Democratic party on the slavery question does not seem to have been a very serious

one. The Southern wing affirmed its confidence in the correctness of the Dred Scott decision, and in terms said that neither Congress nor the Territorial Legislatures had a right to prohibit slavery in the Territories. The Douglas Democrats simply refused to admit the conclusion, although they asserted the premises of the Dred Scott decision, said that it was just and final, and that they would abide by it. The Douglas platform was adopted, and many of the Southern delegations then withdrew. The Democratic convention, after the withdrawal of the delegations, nominated Stephen A. Douglas for President and H. V. Johnson for Vice-President. The seceding delegates nominated J. C. Breckinridge, of Kentucky, and Joseph Lane, of Oregon. A Constitutional Union party—a new name for the former American party—nominated John Bell and Edward Everett. At the election in November every Northern State, with the exception of New Jersey, elected Republican electors, and thus secured the election of Lincoln as President of the United States upon a platform declaring that freedom was the normal condition of the Territories, which Congress was bound to preserve and defend. Immediately after the election of Lincoln was placed beyond doubt, the South Carolina Legislature, in 1860, called a State Convention, which passed almost

unanimously an ordinance of secession, and appointed commissioners to treat with the other slave States for a withdrawal from the Union, and to treat with the United States Government for a division of the national property and of the public debt. By the end of February, 1861, Florida, Mississippi, Louisiana and Texas, as well as Georgia and Alabama, had likewise passed ordinances of secession. Tennessee, North Carolina, Arkansas, Kentucky and Missouri were still wavering and awaiting the current of events. President Buchanan, when Congress met, detailed the condition of affairs in the South, denied the right of secession, but expressed himself as powerless to prevent the passage of the resolutions, and intimated doubts as to the power of Congress to make war upon the States. The session was mainly occupied with attempts at compromise. The Crittenden Compromise was one which was most before Congress, and had the greatest chance of success. The main provisions of the bill were that slavery should be prohibited north of parallel $36^{\circ} 30'$, recognized and never interfered with by Congress south of that line, and that the Federal Government should pay for all slaves rescued from officers after arrest. These provisions were intended to be made part of the Constitution of the United States, and were never

to be altered or amended by the Union as it existed. The Republicans in Congress refused to vote for this measure, and the Southern members therefore refused to entertain it. In February, 1861, a Peace Congress was convened at the request of the Virginia Legislature, and met at Washington. It adopted and reported a number of resolutions for congressional action, all of which Congress refused to entertain. An amendment to the Constitution, however, was recommended by Congress, which forbade Congress ever to interfere with slavery in the States. Meanwhile a convention of delegates from the seceding States was called, which met at Montgomery, and organized the Government which was known during the war as the Confederate States of America. It in many respects copied the Constitution of the United States; it in words recognized slavery; it extended the term of the President's office; it prohibited tariffs for any purposes other than revenue. Jefferson Davis and Alexander H. Stephens were chosen President and Vice-President. A Cabinet was appointed, Departments were organized, and immediate preparation was made to carry on war.

As a sufficient number of Southern delegates had now withdrawn to give to the Republicans an undoubted majority in both Houses of Congress,

Kansas was admitted immediately with a free Constitution ; Nevada, Colorado, and Dakotah were organized as Territories, a new tariff law was passed, mainly in the interest of the Eastern States and Pennsylvania, as the opposition of the free-trade Southern members being withdrawn, all organized opposition to a protective tariff was for the time being at an end.

This brings us to the era of the administration of Mr. Lincoln and the breaking out of the war. President Lincoln was inaugurated on the 4th of March, 1861. His inaugural message expressed a determination to relieve Fort Sumter, and asserted in unambiguous terms the right of the Union to prevent its own destruction. The attempt to resupply Fort Sumter in Charleston harbor precipitated an attack on April 13th, 1861, by South Carolina, which inaugurated the Civil War. Fort Sumter surrendered on the 14th of April, and on the 15th the President issued his first call for troops, which was immediately responded to by the Northern States. An insignificant remnant of the Democratic party remained true after hostilities actually began to the idea that secession was a constitutional right, and that there was no power in the United States Government to coerce a State. Within a fortnight after the breaking out

of the war, Virginia, North Carolina, Tennessee and Arkansas threw in their fortunes with the South; Delaware, Maryland, Kentucky and Missouri, remained, with small majorities, loyal to the Union.

Early during the war the question of the status of the slave became a very important one. Gen. Fremont, having control of the Missouri department, proposed to free the slaves of Missouri; but his order to that effect was overruled by the President. Gen. Butler was more successful by a happy euphemism in declaring the slaves to be contraband of war, wherein he had the support of the Secretary of War.

In September, 1862, President Lincoln issued a proclamation that in the event of the rebels refusing to return to their allegiance by the 1st of January, 1863, he would then issue an emancipation proclamation. Accordingly, on the 1st of January, 1863, during a period of extreme depression and doubt as to the ultimate success of the Union arms in suppressing the rebellion, the Federal armies having met in 1862 with many serious reverses, the proclamation was issued by which the slaves in the States then in rebellion were declared to be free. The slaves held in States not in rebellion were not affected by this proclamation, an amendment to the Constitution being necessary to

accomplish that result as to the "property" of loyal citizens in those States. The emancipation proclamation, after declaring the districts within which it was to be operative, was couched in a spirit of humanity to prevent an insurrection of slaves by enjoining them "to abstain from all violence, unless in necessary self-defence," and promised them that "such as were fitted would be taken into the armed service of the United States, to garrison forts, stations, and other places, and to man vessels of all sorts in said service."

The difficulty in creating the necessary loans, in the early period of the war, and a fear to dampen the ardor of the North by burdensome taxation, caused the passage of a Legal Tender bill, by which the currency of the United States had an enforced circulation—a measure of doubtful constitutionality, but which, as the Supreme Court of the United States subsequently declared, was a justifiable exercise of the war power. A national banking system was created, by which the banks were required to invest their capital representing circulation in United States loans, so that a large amount of the United States Government bonds was compulsorily absorbed in that manner.

During the four years that the war lasted, two States were admitted into the Union : West Virginia,

carved out of Virginia proper, and Nevada. In 1864 the Fugitive Slave law was repealed. Attempts were made in February, 1865, by the President to make peace with the Southern States on the condition of their return to the Union. Although no authorized version of the negotiations has ever been given to the public, it was conceded that with the exceptions of consent to the abolition of slavery, and submission to the authority of the Union on the part of the South, every condition that the Southern States could ask would be submitted to by the North, involving possibly the adoption of the Southern debt and the reimbursement to the Southern slaveholder for slaves lost. But the Southern leaders madly rejected this proposition.

The war at that time, in consequence of Sherman's march through the Southern States, and the pressure upon Gen. Lee's army exercised by Gen. Grant's forces, was rapidly drawing to a close in favor of the Union.

Lincoln was in 1864 reëlected President of the United States, and inaugurated on the 4th of March, 1865.

In April, 1865, the surrender of General Lee, followed quickly by the surrender of General Johnson, practically ended the war. On April 14 Presi-

dent Lincoln was assassinated at a theatre in Washington, and Andrew Johnson, who had been elected as Vice-President, became, on the 15th of April, the President of the United States. This unfortunate assassination of a President in whose wisdom and moderation the people of the United States had very great confidence, added materially to the difficulty of dealing with the Southern States then lately in rebellion. To admit them as States in the full possession of their sovereignty, with the negroes disfranchised, although liberated, was to place the negro once more in the power of his former owner, and therefore to some degree a violation of the implied pledge given by the United States to the negro race, both by the emancipation proclamation and by the use of thousands of able-bodied negroes in the army and navy, that the promise of freedom should be followed by protecting them from oppression thereafter. In any event, the Government was called upon to exercise a guardianship to prevent their reenslavement or such deprivation of political rights as would amount to a perpetual condition of servitude of the race. On the other hand, the United States Constitution had made no provision for the condition of affairs which the war had brought about. To extend the right of suffrage at once, without a

period of education intervening, to the lowest type of a laboring population, made by the system of slavery an entirely irresponsible class of human beings, was full of danger to all vested property interests and to civilization itself in the States where they preponderated. The right of suffrage was always regulated by the States themselves ; the States, as sovereigns, had a right to the organization of their own governmental functions without interference by the federal power except that general provision which made it the duty of the national Government to see to it that the form of government adopted by the States was republican in character. For the purpose of exercising a guardianship over the negroes, and to prevent their being unjustly or harshly dealt with by the Southerners who were formerly slaveholders, the Freedmen's Bureau was organized immediately after the close of the war, with agents in every Southern State, for the purpose of adjudicating upon the rights of the negroes and to prevent their being wronged.

President Johnson, who had spent his adult life in a slave State, and who was a strict constructionist of the Constitution, refused to recognize the methods of reconstruction which Congress saw fit to adopt; he appointed provisional Governors for the States lately in rebellion, and declared his pur-

pose that their terms of office should endure only until a permanent government could be organized. The passage of the Freedmen's Bureau bill, which was vetoed by the President, and of the Civil Rights bill, which was also vetoed, but both of which, nevertheless, being enacted by a congressional overriding of the vetoes, created an antagonism between the Republican majority in the legislative body and the President, which soon ripened into an open rupture.

The fourteenth amendment was adopted by both houses in June, 1865. The Civil Rights bill declared freedmen citizens of the United States. The reasons against this declaration were sound and cogent, because it admitted to the rights of citizenship a large number of persons whose prior condition of servitude and enforced labor made them extremely dangerous citizens. As the right to vote implies not only the right of the voter to protect himself against the aggression of others, but also involves the power, through the instrumentality of taxation, which is placed in the officers elected by the voters, to confiscate the property of others, it was apprehended by many that demagogues and adventurers would win the freedmen by illusory promises of personal benefits to give them their votes, and that, by the creation of

public debts and the exercise of the power of taxation, they would mercilessly confiscate the property of citizens subjected to their sway.

Another Freedmen's Bureau bill passed both houses in the summer of 1866. This was also vetoed by the President, but finally passed over the veto and became a law. When Congress met in December, 1866, the conflict between the Legislative department of the Government and the Executive became so acrimonious, measures passed by Congress were so constantly vetoed by the President, that a determination was formed on the part of Congress to remove the President by impeachment.

In January, 1867, a bill was passed which took from the President the power to proclaim a general amnesty. The Army appropriation bill contained a provision by which the President was virtually divested of his command of the army, by making it imperative that all his orders should be given to the General of the army who could not be removed without the previous approval of the Senate. The General of the army at that time was General Grant, who was relied upon as antagonistic to President Johnson and loyal to Congress.

Nebraska was admitted that year as a State. A new bill was passed to provide governments for the States which lately had been in insurrection. The

States were divided into military districts, each under the government of a General. This military government was to continue until a State Convention chosen by all those who had previously been declared by Congress to be citizens, and therefore negroes included, should form a State government, and ratify the fourteenth amendment. The ratification, therefore, of the fourteenth amendment was a compulsory process, and can scarcely be deemed the voluntary act of the States which had previously been in rebellion.

The Tenure of Office bill, passed over a veto, took from the President the power of removal without the consent of the Senate, but enabled him to suspend until the Senate could act, and declared it to be a high misdemeanor to make any such removal except with the consent of the Senate.

During the summer following this Congress, Edwin M. Stanton, who had been Secretary of War, was asked by the President to resign. Stanton refused to resign. He was thereupon suspended under the provisions of the Tenure of Office bill, and Gen. Grant was appointed Secretary of War *ad interim*. On the 14th of January, 1863, the Senate refused to agree to Stanton's removal. Gen. Grant vacated the office, and Stanton was reinstated. The President thereupon again removed Stanton and

appointed Gen. Thomas in his place. Thomas accepted, but Stanton refused to quit. Both the Senate and House being in session, and the President having clearly violated the provisions of the Tenure of Office bill, the House resolved to impeach him before the Senate on this and other but less tenable grounds, and on the 5th of March the trial of the impeachment was begun. This was the first and only impeachment of a President of the United States under the power granted by the Constitution. In the Senate the vote stood 35 for conviction and 19 for acquittal. The requisite two-thirds majority, therefore, not having been obtained, a verdict for acquittal was entered, and the impeachment trial fell through.

The political contest for the Presidency turned mainly upon the reconstruction legislation. Grant and Colfax were nominated by the Republicans in 1868; Seymour and Blair by the Democrats. The election resulted overwhelmingly in favor of the Republican party. On the 20th of February following the fifteenth amendment to the Constitution, guaranteeing the right of suffrage without regard to race, color, or previous condition of servitude, was adopted by Congress. On the following 4th of March Grant and Colfax were sworn into office.

During President Grant's first term of office the reconstruction of the Southern States proceeded

rapidly under the plan laid down by Congress. The greatest part of the time of Congress was taken up in legislation to secure to the negroes their rights, armed conflicts having taken place at various parts of the Southern States between negroes and whites, arising from the enforced equality of the former and the inveterate prejudices of the latter against their recognition as citizens, and to the unfortunate selections of Governors and legislators in the reconstructed States, by which men known as "carpet-baggers," adventurers from the Northern States, who went to the South for the purpose of securing office, and in the troubled condition of affairs foisted themselves into positions of importance and trust, which they vilely and outrageously abused. As under the amendments to the Constitution the debts of the States in rebellion incurred for the purposes of the war, and the whole of the Confederate national debt were irrevocably repudiated and extinguished, the States were at the time of the reorganization free from all debts, except such as had been created anterior to the rebellion. This offered in the creation of new public debts a great quarry for plunder to the legislative and executive officers who had, during this period, become possessed of political power; and debts were created in a most reckless manner; bonds were issued amounting to

many millions of dollars, for which the States never received any return, and the proceeds of which were in the main embezzled and wasted. This condition of affairs created a righteous, but for the time being helpless, indignation, on the part of the Southern propertied classes, as these Governors and legislators not only rested their tenure to offices upon the votes of the most ignorant and depraved part of the population of the Southern States, but also had at their beck and call the army of the United States to enforce obedience as against citizens who had a stake in the community, and who were compelled quietly to submit to seeing part of their property confiscated by the taxing power, and the remainder mortgaged by the debt-creating power.

The settlement by arbitration of the claims of the United States against England for the degradations committed during the civil war by the *Alabama* and other Confederate cruisers fitted out in English ports, was the most important step of the Grant administration as to foreign policy.

The incidents connected with Gen. Grant's first administration, of corruption on the part of the office-holders in the Southern States, and the class of people to whom he gave his confidence in the Northern States, created considerable reaction against the plan of Congressional reconstruction

as practically carried out, and divided the Republican party into two divisions. Horace Greeley, the editor of the *Tribune*, was at the head of the wing against the administration party, and Gen. Grant remained the representative of the bulk of the Republican party. In 1872 the Republican party renominated Grant for President, and Wilson for Vice-President; and the Liberal Republicans nominated Horace Greeley, of New York, for President, and B. Gratz Brown, of Missouri, for Vice-President. The Democratic party, at a subsequent convention, adopted the Liberal Republican candidates; but the election resulted overwhelmingly in favor of the Republicans, and President Grant's second term of office began.

One of the instruments of oppression that had been devised with much ingenuity for the purpose of perpetuating the power of the adventurers who succeeded in obtaining control of the Government in the Southern States was what was called a Returning Board, a commission which was originally appointed by the Governors of the States with or without the consent of the Legislative department, which had the power to perpetuate its own existence by filling by coöptation vacancies in its own board, and which had the power to reject the votes of whole districts where, according

to the finding of the commission, intimidation had been exercised. This power substantially gave to these Returning Boards the determination of an election; however large the majority adverse to their party might be in certain districts, the vote could be wholly rejected on the mere ground of intimidation, of which they themselves were to be the judges.

During Gen. Grant's second term of office, the question of the resumption of specie payments and the payment of the national debt in gold became the source of most of the conflicts in Congress. The veto by Gen. Grant of a currency bill by which an attempt was made on the part of a majority in Congress to increase the irredeemable currency of the United States, marked the turn of the tide toward correct principles of finance, and gave a strong impetus to a regression to a sound basis for the national currency by its eventual redemption in coin, and of a full and complete recognition, not in words only, of the right of the public creditor to payment in specie. During the war the currency of the United States fell, as calculated in specie, to about thirty-six cents on the dollar—gold stood at one time at 280. At the time of the suppression of the rebellion the premium on gold had fallen to below 30. As gold commanded an increasing premium, commodities and land had a

proportionate nominal increased valuation, and many mortgages on Western lands were easily paid off in depreciated paper which could not have been so readily discharged in coin. Under this fictitious prosperity, a return to specie payments, accompanied by a return to normal prices, seemed like a wide-spread calamity, and many an inhabitant of the United States sincerely thought that an irredeemable currency was the source of prosperity, and a return to specie payments the sacrifice of real benefits to a sentimental sense of honor in favor of the public creditor.

It was not perceived that considerable of an inflation would be caused by the return to specie payments, as \$250,000,000 in coin which were hoarded were added to the circulation. The notion that a return to specie payments would cause financial distress was shared by so large a proportion of the people, that it became questionable whether within any reasonable period the United States notes would be exchangeable for coin. It was only through the persistent efforts of political economists that one constituency after another was won over to sound financial views, and interference with the law fixing the day for a resumption of specie payments was prevented.

The crisis of 1873, followed by a period of extreme

depression of values in 1874, 1875, 1876, added very considerably to the so-called Greenback or Inflationist influence, and was an additional cause in delaying a return to specie payments. Congress had declared in 1875 that on the 1st of January, 1879, the resumption of specie payments should take place, and on the day appointed the result was achieved. This happy result was aided by fortune more than by the wisdom of the politicians, the country having in 1877 experienced, by reason of an extraordinarily good crop and a failure of the European crop, a revival of industry, followed in 1878 by a further increase of national wealth by another extraordinarily good crop and another failure of crops in Europe. These two events turned the tide of gold in the direction of the United States, producing the double effect of both increasing the facilities of the United States Government to resume, and greatly reducing the ranks of the adversaries to resumption.

In 1876 the democrats nominated Samuel J. Tilden, of New York, and the Republicans Rutherford B. Hayes, of Ohio, for the office of President of the United States. The election of 1876—Colorado and Nebraska having in the interim become States in the Union—required for a choice 185 electoral votes. Mr. Tilden had 184 unquestioned electoral votes. Mr. Hayes had 165 unquestioned

electoral votes. Thus Mr. Tilden required but one vote to constitute him President, and Mr. Hayes twenty. The votes that were questioned were one from Oregon, the Governor of which certified to one Democratic and two Republican electors arising from a disqualification on the part of one of the electors, although unquestionably the disqualified elector had been elected; seven from South Carolina, as to the vote of which there was at first a very considerable amount of doubt, and was made the subject matter of litigation within the State, the vote, however, was certified for the Republican electors; four from Florida, and eight from Louisiana. The popular majority in Louisiana and Florida was undoubtedly in favor of the Democratic electors. It was only through the instrumentality of the machinery known as the Returning Board that the vote could be changed into a Republican legal majority. The Returning Board of Louisiana was composed of men whose former action had already been discredited by a Republican Congress under an investigation carried on by a Republican committee. The electoral vote of Florida was declared by the State authorities themselves to have been illegally cast for the Republicans, and the State, by the only means in its power, deliberately recalled the vote of the State

before the vote was counted, and also duly commissioned Democratic electors, whose votes were cast in favor of Mr. Tilden.

In Louisiana the manipulations of the Returning Board forms one of the most humiliating chapters of fraud in American politics; the certification in favor of the Louisiana Republican electors, though regular in form, was created by an instrumentality which, if generally adopted throughout the United States, would make a farce of popular elections. Although these manipulations of results gave a colorable right, before the vote was declared, to Mr. Hayes as the elected President of the United States, yet Mr. Tilden, who had unquestionably received by far the greater popular vote, would, in the absence of any Returning Board machinery, have undoubtedly been declared the President of the United States. In this situation, both parties claiming the Presidency, it was apprehended that another civil war might result if no means were found by which this condition of affairs, unprovided for by the Constitution, could be temporarily dealt with. The Constitution gives to the President of the Senate the right to receive the electoral votes and to open them, and that then they shall be counted in the presence of the Senate and House. Prior legislation had formulated the manner in which this proceeding should be conducted. The

House was Democratic, the Senate was Republican. The House, therefore, would inevitably refuse to count the Presidential votes in the manner in which the Senate would count them, would reject the Republican votes of Louisiana and Florida, and the one vote from Oregon, and would either declare Mr. Tilden elected President of the United States by counting the rival certificates from such States, or declare that no election had taken place and proceed to elect under its constitutional right, which would have resulted in Mr. Tilden's election. At this juncture of affairs a compromise was made between the parties by the passage of what is known as the Electoral Commission act, by which five Senators, five Representatives, and five Justices of the Supreme Court of the United States were constituted a court to whom all the votes upon which the two houses could not agree were to be referred, the decision of which was to be final, unless overruled by both houses. This commission stood in all its determinations eight to seven, there being eight Republicans and seven Democrats, and thus counted in Hayes and Wheeler as President and Vice-President of the United States by determining all the disputed questions in favor of the Republican party. The attitude of both political parties during this contest must have appeared to the cynical observer

as a strange exhibition of the slight hold that principles have upon political parties under the pressure of personal ambition and party dictation. The Republican party was compelled, from the necessity of the situation during the war, to construe the Constitution in the most liberal spirit and in the loosest possible way to meet the stretches of power necessary to bring the States in rebellion, by means of an armed force, back to the Union ; to deny the rights of States against the rights of the United States, and to limit the State power to the narrowest compass. The Democratic party, on the other hand, was, from its position on the slavery question before the war, from its position of quiet antagonism during the war, its position in opposition to the reconstruction legislation of the United States Government during Republican administration subsequent to the war, driven to take a position as advocate of extreme State rights doctrines. In the contest, however, before the Electoral Commission the parties suddenly changed positions on what was supposed to be an ingrained difference of party policy between them. The Republicans became the most strict constructionists of the Constitution as to State rights. They claimed that the official return of a sovereignty of the magnitude of a State, however brought about, could not be inquired into

by the limited and circumscribed sovereignty of the United States Government; and even when the State of Florida solemnly protested that its return had been fraudulently obtained, the members of that party declined to review the decision of the State when it once had been solemnly asserted. The Democrats, on the other hand, claimed the right, on the part of the Government of the United States, upon so vital a question as the election of a President of the United States, to inquire how the State's return was made up, and to take cognizance of frauds which were practiced in the election, which substantially nullified and vitiated the State's action, and to reform such if it be in conformity with justice.

The decision of the Electoral Commission was generally acquiesced in for the sake of peace. The compromise was deemed final, and Rutherford B. Hayes and William A. Wheeler were duly inaugurated President and Vice President of the United States.

The Hayes administration fell within a period of political tranquillity, and it was also distinguished by the high personal character of the Cabinet appointments. It received very general support, and that administration very largely reaped the advantage arising from an era of unexampled and unparalleled prosperity on which the United States then entered by reason of the extraor-

dinary developments of the Northwest and of the mining regions of Colorado, Arizona, Nevada, Utah and Wyoming. During this administration there was an immense increase of exports, in part caused by the failure of the crops in Europe and by the developments which had been made in the railways of the country in increasing the facilities and cheapening the cost of transportation. Resumption was accomplished, and although Congress framed some injudicious legislation in favor of the remonetization of silver at a rate below its market value, as a sop to the heresies of Greenbackers, and as a bounty to owners of silver mines, yet on the whole the administration of Mr. Hayes, and the congressional legislation of that period, produced an advancement of the public credit, a decrease of public burdens, and set a term to and ended the wasteful, wicked, and corrupt administration of the Southern States by the carpet-bag governments.

The election of 1880, wherein the standard-bearer of the Democratic party was Gen. Hancock, and of the Republican party Gen. Garfield, resulted in the elevation of Gen. Garfield to the Presidential chair, by the determining vote of the State of New York. The platform of the Republican party in 1880 committed that party to the protective tariff which from 1860 on, was the continuous fiscal policy of the

United States Government. The Democratic party, on the other hand, had adopted a plank in favor of a tariff for revenue only. The chances of the campaign were decidedly in favor of the Democratic party. The suspicion that a wrong had been done in the elevation of President Hayes, still lingered in the minds of the people sufficiently to lead many republicans to desire a rectification of that wrong, by the election of a Democratic President in 1880. Late in the campaign, the Republicans issued a series of violently aggressive attacks on the free-trade plank of the Democratic party, by which it was attempted to be shown that the prosperity of the United States was largely due to the protective policy ; that the manufacturing industries would be utterly crushed in the event of the Democrats prevailing, and that the laborer would be deprived of his hire and his family of bread, if the free-trade policy were to be inaugurated as against the protective policy which it was claimed had produced within the twenty years then last past such wonderful results in developing the prosperity of the nation. The Democratic party, instead of boldly combatting these utterly unfounded assertions, had become demoralized by the twenty years' exclusion from power, and was so false to principles, and so anxious to succeed that the

sacrifice of all the ballast in the way of principle it still had in the hold of its ship, was determined upon by its then leaders. This caused its standard-bearer to issue a letter at a moment of panic saying that he was personally in favor of protection, whatever the platform might say, and caused the Democratic speakers to hasten to explain away what they supposed to be a damaging element of their platform, though the real element of their strength—the revenue reform plank—and to outbid the Republicans for support as a protectionist party. This act lost them votes from Republican free-traders, who were willing to vote for the Democratic ticket, and gained them no adherents from the Republican ranks. A vulgar forgery of a letter was issued by the party against Garfield, attempting to convict him of a policy favoring Chinese immigration. To add to the Democratic calamity, the Democratic party had allowed its organization in the city of New York, where its strength was greatest, to fall into the hands of "bosses" and juntas of politicians who were at all times willing to sacrifice for the sure gains of the local offices the larger and more problematical results of a national victory, and as the State and Municipal elections are held simultaneously with the national election in the State of New York, a small change of votes caused by these

sinister and personal interests, was sufficient to give by a small majority the thirty-five electoral votes of the State of New York to the Republicans instead of to the Democrats, for whom in the computations theretofore made it had generally been counted. The result was the election of Mr. Garfield as President of the United States, whose term of office, beginning on the 4th of March, 1881, came to a sudden termination at the hands of a malignant assassin, on the 19th day of September, 1881. Thereupon Chester A. Arthur, who had been elected Vice-President upon the same ticket with Mr. Garfield, became the President of the United States.

With the settlement of the slavery question, reconstruction, and return to specie payments, the Republican party finished its work. It lives now on the record of its past history. The Democratic party, except as to the free-trade principle, to which it can scarcely be said to be faithful, has now no distinctive principle from the Republican party. It still insists in its platforms upon State rights, but as such rights are not really assailed, it can scarcely be deemed a vital question in American politics. Indeed the caucus system, thirst for office and popularity, have so demoralized both great political parties, that their dissolution is a mere ques-

tion of time. Upon causes deeper than any which the present leaders of these parties are likely to forecast or anticipate, will depend the reorganization of American political parties upon political issues of the future, involving principles asserted on the one side, and denied by the other.

CHAPTER VI.

CURRENT QUESTIONS PRODUCTIVE OF CHANGES IN THE CONSTITUTION.

It is, of course, impossible to foretell with accuracy the changes time may bring forth, which will materially modify and affect the organic law of the United States. Whatever development the United States, in the near future, will experience will necessarily come from within and not from outward pressure. Unlike the nations of Europe, the United States has no neighbor sufficiently powerful to affect its policy or to modify its constitution. It requires no standing army; and so long as England performs the police duties of the seas, it requires but little of a navy. It has no occasion to fear any serious foreign intervention, and it is therefore left freer than any other nation within the period of modern civilization to pursue its own development. In that respect its position is *sui generis*; nothing resembling it as a national power has ever appeared on the face of the earth, except the condition of savage

tribes and insular nations, not brought within the influence of civilization, as to the severance of political interests from that of all other peoples. The good that is within it can, therefore, come to its ripest development: the evil that it contains, unless corrected, will bring its direst sinister consequences. The influence of foreign nations upon it are entirely of an industrial, intellectual, and commercial character.

A combination of circumstances beginning with the war of 1861, intensified by the extension of the means of intercommunication between the States by the railway and the telegraph, in conjunction with the natural and artificial waterways of the country, have made of the United States a solidified nation, within the generation last past, to an extent that was not anticipated by its founders, a consolidation much more complete than the theory of American institutions would seem to justify. State lines exist and will continue to exist for all purposes of penal and municipal law, except in so far as they may, as already shown in these pages, be overridden by the paramount law of the Union. Yet the traveler who starts in a railway train at Boston and remains in the same palace car until he arrives at San Francisco, travels through twelves States and Territories without noticing any State line, and rapidly

comes to regard the whole domain as his one country. The tendency of the times is necessarily to weaken the power of the State on the allegiance of the individual, and lead to a greater and greater consolidation and unity of interest of the whole United States. This tendency is still further accelerated by the inability on the part of the individual States to deal with the economic and social questions which necessarily arise from the extension of the means of intercommunication between the States, and the necessity for the existence of a general power to deal with them. Already the States have felt and have, to a considerable degree, acknowledged their inability to deal with the railway and the telegraph question. The decisions of the Supreme Court in recent years, recognizing the inability on the part of the States to deal with these questions, have considerably extended the jurisdiction of this court over transportation routes lying partly within one State and partly within another, or upon a river running through two or more States. In the so-called Granger cases the Supreme Court has asserted jurisdiction in cases of all inter-State commerce in which goods or passengers are taken from one State beyond its own borders within the domain of another. This tendency will continue to consolidate the power of the United States upon all indus-

trial and commercial matters as to which the States have a common interest, and for the purpose of putting that question at rest so that the United States may deal with that subject precisely as it deals with the subject of bankruptcy, a constitutional amendment will, in all probability, be adopted and acted upon, granting to the United States Government in express terms that which it already claims to have by implication, so that it may deal fearlessly and effectively with the important problems that arise from the organization of great monopoly interests which are incident to modern methods of the transportation of goods and passengers.

With the exception of the Pacific railways, all the railway corporations of the United States were chartered by the States, and though many of them have thousands of miles of line traversing many States, they claim their powers under the separate charters of the different States through which the lines run, and are in theory only amenable to the States covered by their lines of rails. Inequalities of rates, however, creating unjust discriminations between individuals of different States, and exercising a function analogous to that of taxing arbitrarily and without control, has and does create a power within the nation so great that it threatens sooner or later to dispute the fact with the

authorities of the United States as to whether the railway or the governmental power is the greater. The State political machinery has to a very considerable degree already succumbed to the exercise of this power, and therefore to make head against it it will be found necessary to clothe the general Government with sufficient attributes of sovereignty to deal with the subject adequately.

That this necessity runs counter to a very correct theory of decentralization, and that the liberty of the individual is endangered by all centralization of power, is a truth to which thoughtful students of political history cannot shut their eyes. But precisely as in Germany a false decentralization of power had to be succeeded by a nation having centralized national power, with the view to intelligent and proper decentralization ; so in time it may be necessary in many particulars to disregard State lines and the localizing of power resulting from such State lines, for the purpose of more intelligent and more effectual decentralization in those particulars wherein it is beneficial, and also to secure centralization in those matters wherein decentralization involves danger to the commonwealth.

The development of the taxing power arising from the war quadrupling the number of office-holders in the United States within the period from

1860 to 1870, and increasing as it did the ordinary expenditures of the United States Government, independently of interest on the public debt from \$60,000,000 in 1860 to \$220,000,000 in 1867, has in itself aggravated certain evils which only were easy to be borne at a period of time when the United States had a debt of \$64,000,000, representing per capita \$1.91 in 1860, instead of a debt of \$3,000,-000,000 in 1865, with a per capita charge of \$78.25.

From the time of Jackson's administration appointments went by favor, not by merit, and that which was favor originally, degenerated into a claim of right dependent upon political activity in favor of the successful candidate. Appointments were made to high offices not because A. B. was specially qualified for the office, but because A. B. was a skillful or efficient worker in the campaign which preceded the successful election of the incumbent. This system not only fills the public offices of the United States with inefficient and corrupt officials in high station, and keeps out of political life the capable men, who are disinclined to perform party work as a condition precedent to accession to office, but it also created the same system under those officials as to all their subordinates; and as from the Presidential office down to the lowest political official, tenure of office is depended upon the con-

tinuation of the administration, at every recurring election these officials strive by personal activity at the polls, and in the organization of the machinery of elections and nominations, to continue in power the political party to which they belong, so as to preserve their personal incumbency of the office, and they were to a very large degree, and still are, regularly assessed to pay the political expenses of a campaign. Millions of dollars are thus raised from office-holders in the United States at every recurring Presidential election, or even local elections, in the *interim*, which may have a remote effect upon the Presidential elections, to pay the expenses of campaigns and to create a "corruption fund" for the purposes of the party to which these office-holders respectively belong. So intolerable has this abuse become that for some years tentative efforts have been made, even by administrations, to correct some of the more flagrant evils of this system, and during the administration of General Grant a Civil Service Commission was organized to deal with the subject. The influence of party, however, was too powerful for any permanent success during General Grant's presidency, and the Civil Service Commission came to an end.

As President Hayes was elected upon a platform

which pledged his administration, in the event of the success at the polls, to the inauguration of a system of civil service, steps were inaugurated shortly after the 4th of March, 1877, to create a system of promotions by merit and permanence in the tenure of office. The contest, however, of the politicians against it, and the somewhat half-hearted manner in which the system was pressed by the administration itself, prevented any great progress being made in that reform during the administration of President Hayes.

The Republican party again pledged itself to civil service reform in the platform of the convention which nominated Mr. Garfield, and although during the early period after his inauguration much of the time of the administration was taken up by personal wrangles between senators and the President on the question of the exercise of the Presidential prerogative of appointments to office without dictation from senators, which operated to prevent any considerable progress being made in the introduction of a harmonious system of civil service, yet from the character of President Garfield it was a reasonable assumption that during his administration some decided step in advance would be taken looking toward the practical introduction of this reform.

The Democratic party discovered that during the contest for the Presidency it was confronted by a vast army of office-holders, contributing a vast fund, through assessments on their salaries, to the sinews of war of their adversaries, to prevent the accession of Democrats to power. Such assessments were paid because the office-holders knew that their official existence would be terminated in the event of a change of administration under the domination of an adverse party. This fact brought about a conversion of the Democratic party in favor of some reform of the civil service which would take that important element of opposition out of future contests to prevent its accession to power, so that in the United States both political parties are now pledged to the introduction of civil service reform, and a bill introduced by Senator Pendleton, a life-long Democrat, which secures fixity of tenure in all the lower grade of offices, is in a fair way to become a law; and there is but little doubt that within a few years the public service of the United States will be brought more in harmony with the condition of public service in other civilized countries.

The evil of the abominable "spoils" system in the United States is not so much the incompetency of the officers—as the American's adaptiveness en-

ables him quickly to learn the routine duties of an office—nor in the waste of public moneys (because in a community so rich in productive power as that of the United States the amount which peculation can take from it is a burden easy to be borne); but the main evil is that the “spoils” system demoralizes both parties, and makes contests, which should be for principle, mainly for plunder, and induces parties, in the hope of an accession of strength sufficient to obtain political power, not only to lower but absolutely to abandon their principles, and to make their platforms conform to what they suppose will more rapidly win popular success, and thus makes of the quadrennial presidential contests, mere scrambles for office.

Important as it is to secure a reform in the civil service of the United States, that alone, however, even if successful, would not result in any improvement of a very permanent character in the conditions of the party systems of the United States. The causes which make parties permanent institutions in the machinery of government of constitutional monarchies, having like England large bodies of persons who are either placed in positions of exceptional advantage, like that of the hereditary legislators of England, or permanent disadvantage like the classes not admitted to the suffrage, are

such that there will necessarily, so long as this condition of affairs exists, be a party seeking to diminish the power of those exceptionally well placed and to increase the political powers of those who are not admitted to the suffrage. This permanent cause for party existence does not prevail in the United States. And yet party lines are drawn as sharply in the United States as they are anywhere, and the tyranny of party is in many respects greater than anywhere else, because the caucus system has permeated it to the uttermost degree and created an autocracy of party managers, the hold of which will not be entirely shaken off—indeed, but slightly loosened—by the introduction of the civil service reform.

That party management in the United States becomes more unscrupulous than it does elsewhere arises in part from the fact that in the United States there is no large leisure class of cultured men who, from a sense of duty or because of their large financial or property stake in the community, devote themselves to its political government. The absence of such a class and the intensity of occupation in industrial employments of the community at large, place the management of party in the hands of briefless lawyers and unsuccessful people in other avocations of life, who, having

been, as a general rule, eliminated downward from other occupations, devote themselves wholly to political intrigue and the perfecting of the political machinery. As office, and speculation upon the money expenditures arising from the pursuit of office by others, through party machinery are their main objects, it results in time in a domination of a class of politicians, to whom the principles of the party are mere cries to catch votes, and who doff and don those principles as it suits their convenience or their expectations of gain. That both political parties contain among their leaders men of a higher order of intellect, and that even the political machinery cannot get on without men of that stamp, to whom they are compelled to give honors and office, is unquestionably true. The characterization of the average politician applies more especially to the people who have control of the machinery of politics in the large centres of population. This evil condition is promoted and is enabled to work its worst results by the system of representation now prevalent, with few exceptions, wherever representative institutions prevail, viz.: that of giving to majorities only in circumscribed election districts the right to representation, instead of, as far as possible, by some system of minority or totality representation, to aim at a representa-

tion of the whole community. The hold that the party managers have upon the voters, who would otherwise rebel against their tyranny, is that if the voter fails to vote for the candidate they submit, he either is compelled to throw away his vote on one who has no chance of success, or directly or indirectly to aid the promotion to office of some one nominated by a party machinery equally odious and representing the other side in politics. If, on the other hand, in the election of representatives, small bodies of voters could detach themselves from the main body, and by affiliation with other similarly detached bodies of voters within the State, succeed in representing one or more electoral quotas, as, for instance, in the State of New-York, with its twelve hundred thousand voters, having thirty-three Members of Congress to elect, could thus secure one-thirty-third of the voting power of the State, these combined detachments could elect a representative independent of party, and in this way every important phase of popular opinion could seek and find its own representation. Parties then would represent principles, and the principles not be the mere banner or shibboleth of party, hauled down and replaced as it suits its convenience, and the individual voter would become comparatively independent of party dictation. This would

act as a solvent of political parties as at present constituted; would retain what in them is useful and good, and would utterly prevent the evil effects of the caucus system. This reform once introduced, would fructify into inestimable political blessings to the country, as it would make a political career independent of an accidental majority in a district, and secure for that career an entirely different class of statesmen and politicians than party machinery now brings to the front. The civil service reform confessedly will act only upon the minor offices within the United States. This reform of minority representation would be operative for good in a change in the character of the nominees for every important elective office where there are more than two persons to be elected, and would totally alter the character of political parties as at present mischievously constituted.

Another subject which will presently engage the attention of the American people is one which, since 1860, has been driven to the background, that of liberalizing its navigation laws and its system of tariff duties. The rate of taxation in the United States both as to internal revenue and the admission of foreign goods is as yet, it may be said, upon a war footing. When the Southern delegates to Congress withdrew in 1861, the opportunity was

immediately seized upon by the protectionists to inaugurate a protective system on the pretence that the Government required an enormous amount of revenue to carry on the war, and that to increase the tariff would increase the revenue, as well as indirectly afford protection to a larger number of home industries. The long-continued adhesion of the Southern States to a system of free trade put for the time being every advocate of free trade in the North during the progress of the war in a false position, because it appeared as though he were in favor of the South in advocating free-trade theories. The fictitious prosperity created by the paper currency issued during the war, disguised for the time being the evil influence of a protective tariff. After the close of the war the paramount questions which engrossed the attention of the nation were necessarily those relating to the reconstruction of the Government of the Southern States, and the return to specie payments; subsequently the depression caused by a return to specie payments enabled the advocates of a high tariff to attribute the evils which came synchronously with contraction, to contraction alone. After specie payment was resumed an immediate impetus was given to the prosperity of the country by a combination of causes of which the return to a sound financial basis was but a part,

successive good crops, the great tide of immigration, and the development of the mining industries of the Western territory as well as the opening up of vast tracts of virgin agricultural lands in the Northwest, together contributed since 1876 to enhance the prosperity of the United States beyond all precedent. This again concealed from the people the evil effects of the tariff legislation, and enabled the tariff advocates to claim for their vicious system the prosperity which came despite their system.

In one respect alone is the evil effect of restriction so visible that it cannot be attributed to any other cause, unaccompanied as it is by any misleading element of prosperity on the other hand, which counteracts it; and that is, in the complete prostration of the shipping interests of the United States, and the almost total extinction of its commercial steam marine engaged in foreign trade.

The beginning of a change in the restrictive legislation of the United States will probably first be made herein. The navigation laws will be made more liberal; an American register will be able to be obtained for ships built in foreign jurisdictions, as an effort must soon be made to bring back to the United States part of the carrying trade which its navigation laws have utterly destroyed. An overflowing treasury will be another reason for

revising the tariff. The plea of necessity for higher rates of duty, false as it is because the experience of England and France under the Cobden-Chevalier treaty showed conclusively that the lowering of rates of duty increased the revenue, has also fallen away. A dangerous move, however, in opposition to free trade is already making itself apparent in an agitation for the removal of the internal revenues of the country, which yield a very considerable proportion of the annual income, in the expectation that the removal of these internal revenue duties will compel the maintenance of a high tariff. One of the first steps in that direction had already been made under the plea of a free breakfast table, by which the duty on tea and coffee was lowered, and by putting on the free list a large number of articles which the United States do not at all produce.

Could the Democratic party, which is the traditional party of free trade, be relied upon to be true to its principles upon that subject, it would be reasonable to believe that the very next Congress would succeed in producing considerable reform in that particular; but the result of the recent Presidential election in which the Democratic party as the campaign was drawing to a close, became panic stricken by reason of the attack upon its revenue reform plank in its platform, has so demoralized

many of the so-called leaders of the party, that already indications are abundant that some of the Western leaders of that party will in the future Congress be out-and-out protectionists, and attempt to outbid the Republican party in the claim for popular confidence on the ground of willingness to afford protection to home industry as against foreign competition. A reorganization of parties will in all probability result from that question, after both great party organizations shall have been shattered by it; and that reorganization would best be brought about by a previous introduction of the system of minority representation, which would assist in the detachment of great bodies of voters from party affiliations.

One of the problems which, though locally confined to the Pacific coast, is one with which the Union as a whole is called upon to deal, is what is known as the Chinese question. Considerable numbers of Celestials have been attracted to California and the Pacific States generally, and have there proved themselves to be very formidable competitors to American labor, as the wants of the Chinaman are simpler than those of the European and American, and his industry is more continuous and machine-like than that of his rivals. This has created a prejudice against his labor to that degree, that the

Constitution of the State of California has been amended to prevent corporations from employing Chinese labor, and the politics of the Pacific States is largely influenced by that question.

As a mere branch of the protective system, the political economist must of course deny to the agitation against the Chinaman all validity; but there is one argument which is advanced in favor of the exclusion of the Chinaman which has force, and to which the free-trade argument is no answer. The Chinaman refuses to become part of the body politic; no matter how long his residence, he does not become a citizen: he expects to be interred in his country; he lives in separate quarters; and a considerable addition to that population creates a class of people who are not citizens, and who have no permanent interest in the welfare of the community in which they reside. That such a class, if sufficiently numerous, may become a dangerous one to the civilization of a community, is unquestionably true. That to a large degree, however, his segregation from the rest of the community is due to prejudice against him, and that in time he may become by social recognition, intermarriage, and citizenship, when that prejudice subsides, a valuable part of the body politic, is likewise true; but this process is necessarily so slow that the un-

checked emigration from that vast and teeming hive of humanity, the Celestial empire, will produce much disturbance in the political and social condition of some of our far Western States. This question has already received partial attention by legislation by the Congress of the United States which must rely for justification upon a basis quite other than the false and delusive one of protection to American labor which such legislation is supposed to afford.

A rapid decrease of the public debt takes the question of the payment of the bondholder in any but the best of faith out of the domain of political questions. But there still remains a monetary question which has been unfortunately muddled in the United States by demagoguery. The ratio of silver to gold having been fixed too low by the currency laws anterior to the war, silver was practically driven out of circulation, gold upon that ratio being the cheaper metal. In 1873 Congress demonetized silver for all large payments. Subsequently the rapid decline of silver in the markets of the world, due, in great part, to the demonetization of silver by Germany and the discovery of enormous silver-bearing lodes in the Rocky Mountains, caused a fear amongst silver producers that unless America remonetized silver, silver would fall to such an extent as to seriously impair the value

of silver mines. The original dollar was 416 grains standard. Its weight was changed in 1837 to $412\frac{1}{2}$, and its fineness changed to 900 from 892. This coinage of $412\frac{1}{2}$ grains was revived in 1878 in what was known as the Bland Silver Bill, and it was made a legal tender for all debts, public and private, notwithstanding the fact that in recent years the value of silver had sunk so low that the value of the bullion in the dollar of $412\frac{1}{2}$ grains was less than eighty-one cents. The amount required to be coined under the bill is \$2,000,000 per month. Thus far no inconvenience has resulted from this coinage, because a considerable part of it has been absorbed by the necessity for small change. A trade dollar also was issued for purposes of Eastern trade of 420 grains, but this is not a legal-tender dollar. A large accumulation of the standard silver dollars is now in the vaults of the treasury, and if no amendment is made to the law as to the rate of coinage, the question will soon be upon the United States whether they desire to have an exclusive silver coinage of a depreciated character, as under the inevitable effects of what is known as the Gresham law, the cheaper currency will drive out the dearer. That this effect would be counteracted by a simultaneous remonetization of silver by the European governments which have hereto-

fore demonetized it, thus creating, for the time being, a strong demand for silver, is doubtless true ; but as the result of recent conferences on that subject gives us no hope in that direction, the United States Government will either have to demonetize silver or raise the number of grains in the silver dollar to a par with gold values, or in the future demonetize gold, and have its currency in a depreciated condition as compared with the actual values of the metal. The question in the United States is more complicated and taken out of the domain of pure theoretical and philosophical discussion on its merits, as to whether a bi-metallic or a mono-metallic currency is better for a community, by the fact that the persons who were afflicted with the greenback mania have become imbued with the idea that, as greenbacks have now become equivalent to gold, their hope of prosperity lies in a depreciated silver currency. It is a curious illustration of how fast a hold the *post hoc ergo propter hoc* error takes upon a community. As the inhabitants of the Northwestern States during a period of rapid issues of irredeemable paper money were enabled to pay off their debts, and were prosperous in so doing, in a currency which incidently depreciated rapidly, many of them concluded that the depreciation was the source of their prosperity, and that

therefore any currency that depreciates is useful to them.

In the early period of the war—when the Confederate forces prevailed over the Union armies—the organization of the national banks was devised as a means compulsorily to float the public debt and to create a large home market for United States bonds. The State bank systems, which theretofore existed for furnishing a currency for the people of the United States, were, for good or ill, dependent entirely upon the legislation and the enforcement of the laws in the various States of the Union. The facilities for counterfeiting these issues, as they were by no means uniform in device, were abundant, and the danger of being imposed upon by counterfeit and badly secured bills was very great. These causes produced a constant fluctuation in the value of such currency, and at any moment of financial depression or crisis the currencies of the different States became of different values, and great losses were entailed upon the holders by reason of such fluctuations. The Government issues of paper money, together with the issues of the national banks, based upon deposit of United States bonds, gave a uniform character and value to the currency of the United States. This convenience is so great that the national banking system, although

opposed with considerable vigor at first, has been accepted in the United States as a remedy for an evil much greater than that which it in its turn has brought about. There is, therefore, no probability of any concerted action against the national banks, and the system, with some slight modifications, is likely to be as permanent as the national debt. This system has also set at rest the question of the recharter of a United States bank. There is occasional and fitful opposition to the issues of the national banks, on the ground that the Government, by a direct issue of the notes represented by the national bank currency, would save the interest represented by such issue. The objection, however, on the other hand, to give the Government absolute control of the issue of the currency, and the sinister influence that it may thereby exercise upon the money market, is of so much more serious moment than the one of mere loss of interest, that thoughtful people have, on the whole, acquiesced in and deemed it preferable to maintain the system of national banks, rather than to place the monopoly of currency issue entirely in the hands of the Government; and as hitherto no loss has been entailed upon the holders of national bank notes, as actual issues of notes are always secured, whatever fate may betide the bank in its discount and deposit department, the well-

grounded objection that existed against the State issues, which caused monstrous losses to holders by failures of banks to redeem, does not prevail against the United States banks. However, if the present rate of extinction of the national debt continues, in less than ten years some other basis than United States bonds must be provided for a uniform currency.

During the war large portions of the public domain were granted to private corporations to assist them in building the Pacific railroads. This was followed by great grants to railway corporations to assist in building railways but remotely connected with the Pacific system. However justifiable the motive originally was to grant the aid of public lands as an encouragement to the building of these great arteries of commerce, yet the aggregate public property thus given away became so great and the monopoly in public lands threatened to become so formidable, that a public opinion has been evoked in the United States that the public domain left under the control of the Government shall be used entirely for the purposes of the settlers, and not be thus given away. It is estimated that the domain given to the North Pacific Railway and branches is equal in territory to that of the whole of France. The increased value of the pub-

lic domain of the United States will in itself be a check against extravagant concessions of land in that manner, and an intelligent public opinion has been created to prevent wastefulness hereafter.

The advancing wealth of the nation resulting in a growing importance of governmental functions in different departments of the United States Government, which are respectively under the direction of one of the Cabinet officers, and the desirability that these departments should be subjected to the constant criticism of the Legislative branch of the Government, has caused an earnest agitation in favor of giving to Cabinet officers seats in the House of Representatives, with a power to debate without voting on the result; so that in the United States, as in England, interpellations may be made respecting the conduct of any one of the important departments of Government, and an answer elicited on the spot. At the beginning of the American Government these Cabinet officers were personal advisers of the President, were appointed by him, and were responsible to him alone. The fact is now, however, recognized (more especially with reference to the Treasury) that the annual reports or budgets give insufficient information, and that during the course of the year too much opportunity is afforded for sinister influ-

ences to accomplish ends having relation to stock-jobbing and the obtaining of private information of intentions on the part of the Treasury as to policy, sale of bonds, etc., a remedy for which would be found if the Secretary of the Treasury were personally responsible to Congress. The further advantage expected to be derived from having the Cabinet or Ministry connected with the popular branch of the legislative body is that in that way some more direct responsibility will attach for the legislation of the Congressional session to the Government in power. One of the serious defects of all American legislation is the almost entire absence of responsibility connected with legislation. The party having a majority has no organized Ministry charged with the duty of forwarding and formulating the public legislation of the session, and however faulty and slipshod, and even mischievous, the Congressional or State legislative law-making may prove during the course of the year, the party having a numerical majority in the legislative body is not responsible because there is no Ministry as part of the law-making power which proposes and promotes legislation. Laws are proposed by individual members upon their own responsibility, and are passed in a hap-hazard and slipshod sort of way. A further argument

in favor of the reform is that to compel, on the floor of the House, an explanation of the conduct of the department, does certainly apply the corrective of publicity to all jobbery and peculation. The objection, that the selection of persons to fill executive departments should be made with reference to executive and not oratorical abilities, and that such a change might compel appointments with the view to capacity readily to explain conduct, instead of fitness for administrative work, has but little validity, as a very short experience teaches the average American to talk clearly and glibly on the subject he has in hand.

The evil of including improper items in a bill making appropriations for the indispensable objects of government, thus morally obstructing a veto, caused, in several of the States, a constitutional amendment to be adopted enabling the Governors to veto special items of the supply or appropriation bills, and to approve the remainder. The clearly extravagant character of the River and Harbor Bill of 1882 has awakened public attention to this subject, and will, doubtless, at an early day, cause an Amendment to the Constitution of the United States to be adopted, which will clothe the President with a like power.

CHAPTER VII.

THE STATE CONSTITUTIONS; THE CHANGES THEREIN, AND THEIR DEVELOPMENT.

THE Federal power being one of delegated powers, the States are in all matters not so delegated, the sole sovereignties. The State Constitutions map out the organization of the State Governments, limit their powers, and are in many respects more important conservators of the liberty of the citizen than the Federal Constitution itself ; for the reason that the powers not surrendered to the Government of the United States are much more extensive and much more immediately related to the rights of the individual, and therefore affect him more closely than the delegated powers of the Federal Government. In all their functions and domestic relations, amenability to the deprivation of life or liberty by the criminal law, in the assertion or denial of rights through the civil administration of justice—the State, with but few exceptions, has absolute control over the life, liberty, and happiness of its citizens. This book, therefore, would

be incomplete if it did not give some account of the changes which have taken place in recent years in most of the State Constitutions, showing by means of these organic laws the course of governmental development.

During the Revolutionary War most of the original thirteen States adopted State Constitutions, many of which were redrafted shortly after the war; and before the formation of the Constitution of the United states, all the original States had written Constitutions. Every State, on its admission to the Union, submits its Constitution to Congress, so as to give assurance thereby that it has, as required by the United States Constitution, adopted a republican form of government. These Constitutions all contain elaborate declarations of the rights of citizens which are not to be subjected to legislative or judicial interference, and are thereby reserved from the interposition of Government. These declarations of rights also contain carefully worded provisions securing the right to the writ of habeas corpus, of jury trial, and of exemption of private property from seizure for public purposes except on due compensation being made. They set forth how such compensation shall be ascertained ; insist upon guarantees of freedom of speech and of the press ; secure the right of petition and the right

of citizens to vote at all elections, and require that all officers shall either be elected directly by the people or appointed by some authority elected by the people.

Since the War of the Rebellion the Southern States, in which slavery had theretofore existed, amended their Constitutions, by forever abolishing slavery and every form of human servitude.

The State Constitutions all divide the functions of government into Legislative, Judicial, and Executive, specify the manner in which the Legislature shall be elected, and set forth the powers of the Executive ; organize the Judicial system ; declare the manner of the appointment of the Judges, and confer upon them their respective jurisdictions. There is much uniformity in these particulars in the State Constitutions. The legislative power is generally vested in a legislative body composed of a Senate and an Assembly. The Senate is a small elective body, each member of which is elected for a longer period of years and from a larger district than the more numerous and popular legislative body, which changes generally from year to year.

Each State has its Governor, elected for terms of from one to four years ; some have Lieutenant-Governors and other elective executive officers. In

States where such public works exist, canal commissioners or superintendents of public works are either elected or appointed under constitutional provisions. State engineers and surveyors exist in most States, also state prison inspectors and other public boards to take charge of public works. Universally, municipal organizations are created, county organizations are established, and a system of decentralization of power is adopted for the purpose of securing local self-government within the domain of the State. Provisions are contained in many of these constitutions upon the subject of taxation, so as to secure uniformity and equality therein, and prevent the growth of public debts by throwing safeguards around the creation thereof.

There are provisions in relation to the militia. Most of the Constitutions now contain special articles on the subject of bribery and official corruption, and all contain provisions as to methods of amendment. In some of the States the Constitution is limited as to duration to a number of years only, and State conventions are required to be called from time to time for the purpose of suggesting amendments.

Some of the original Constitutions of the States required voting to be *viva voce*, and it was only in imitation of the Constitution of the State of New

York of 1777, that voting by ballot was generally introduced.

In some of the earlier Constitutions of the States a property qualification was required for the enjoyment of full citizenship, but this qualification has almost wholly been swept away. In the Constitution of the State of Massachusetts there is a provision that the voter shall be able to read the Constitution in the English language, and write his name, and by an amendment to its Constitution in 1863, two years in addition to the time necessary to qualify a resident to become a citizen of the United States, is necessary before he can be a citizen of Massachusetts.

Under the Constitutions anterior to 1848 many of the officers now elected were appointed by the Governors. Notably so was this the case as to judicial positions. The Constitution of 1846 of the State of New York, which, as to this change was the pioneer State of the Union, was drafted by men who were imbued with a spirit of radical democracy and who looked with suspicion upon all executive power. The Constitution thus framed therefore stripped the Executive office of many of the functions that it theretofore had and added enormously to the number of persons to be elected by the people, even Judges of courts of record

among the rest. This change, for reform it can scarcely be called, was adopted in other States, and it is only in recent years that the wisdom of the change has been questioned and some modifications made in the original provision of the New York Constitution of 1846, and those of other States. It was found that electing Judges for so short a period of years as that provided for in the Constitution of 1846 of the State of New York resulted in obtaining in many instances, as Judges, mere politicians of a low order. It therefore became necessary either to return to the appointing power, or to make the tenure longer and the salary larger, so as to make the Judge, at least for a considerable period of time, independent of the favor of political parties. By amendments of 1869 the Judicial system in New York was recast ; the Judges of the higher courts were elected for a period of fourteen years instead of six, as theretofore, and public opinion was brought to bear upon the question of their remuneration, so that the salary of the Judges of the higher courts were made to approximate a little more closely to what could be earned by a lawyer in active practice. The opinion of the Bar, as expressed by organized bodies of lawyers, has been, however, almost uniformly in favor of a return to the system of appointment by the Execu-

tive: as the people as a whole, under existing American political conditions, are scarcely the proper custodians of the power wisely to select from among the Bar, the men who are best qualified for judicial functions; and the methods resorted to in order to secure nomination for judicial offices are oftentimes in themselves so demoralizing that it degrades the office in popular esteem, even if the selection of the people on the whole were as wise as that which could be made by the chief executive officer of the State, acting under a sense of his responsibility to the people for making a proper selection. The appointment to vacancies in judicial offices of course must still remain with the Executive, but such appointments are generally limited until either the next succeeding general election or the election following the next succeeding general election.

A firm conviction that decentralization of power was necessary to insure honesty in the administration of public affairs injected into almost all of these Constitutions the requirement that municipal bodies shall elect their own officers, and that no one was to hold office within the municipality unless elected directly by the people in the locality or appointed by an elected authority therein. This so multiplied elective officers within the State

that at a general election the voter is bewildered with the number of people he is called upon to vote for, and he finds it, therefore, more and more difficult to determine upon the fitness of candidates, and is thus put at the mercy of political wire pullers and leaders who make the selection for him and call upon him to vote aye or nay between two or at most three candidates for the same office. This difficulty has not yet met with an intelligent solution at the hands of the American people.

Before the adoption of the Constitution of 1846 in the State of New York, and which is here taken as an example of the leading State Constitutions, because, as before stated, the amendments made by that Constitution were extensively followed in other States, a great source of evil was that the railway, banking, and insurance corporations created so formidable a lobby to secure special legislation and privileges for the benefit of such corporations, that it was deemed expedient to cause general laws to be passed for their government, and restrain the Legislature thereafter from passing special laws upon the same subjects. As, however, the Legislature was permitted to pass special laws in all cases whenever in its own opinion such legislation was necessary, the restriction, except as to banks and insurance companies, was not a very efficient one.

This question of special legislation is one which has not been wisely dealt with by the people of the United States, who in their attempt to reform the evil arising from the lobby interested in pressing for and securing such special legislation have fallen into a worse evil.

By a constitutional amendment adopted in the State of New York in 1874, the Legislature of the State is prohibited from passing special laws in a large number of enumerated cases which had theretofore been the lobbyist's most lucrative field of practice, and produced the greatest amount of corruption. This amendment has been followed in other States. Albeit in Missouri and Pennsylvania, constitutional amendments of the same character had been adopted even prior to the one of New York. It was supposed that thereby a blow would be struck at corrupt legislation, and that the Legislature would be free to pass general laws upon these matters and be thereafter absolved from all further concern in relation to the subject. It was not then seen that the most dangerous form of special legislation is that which comes under the guise of a general law, or as an amendment to the general law, and that after special legislation is forbidden, all persons desiring special privileges or legislation to meet a particular case, could just as well influence

the Legislature to amend the general law to meet his case so as to give him a special privilege, as to cause a special law to be passed. In that manner one law after another has been placed, since 1875, upon the statute book of the State of New York and other States which followed the lead of New York, having their origin in personal interests only, and to meet special cases, thus destroying whatever there was of harmonious legislation in the general body of the law. This evil is more insidious and in its effects much more dangerous than the one which it was intended to remedy, and is one especially mischievous in the United States, because, as already shown, there is no body of permanent legislators standing guard over the laws of the State, and no responsible ministry having charge of public legislation and responsible for it. There is not even party responsibility in relation to such laws, which are passed or neglected under the pressure of private interests or in the absence of any such pressure fail. It would have been very much wiser to have methodized legislation; to have separated, as the English Parliament has done, public or general legislation from all legislation which is private or local in character; to require notice of application for private or local acts before the convening of the legislative body;

to treat them not as laws, but rather in the nature of judicial determinations on the part of the Legislature after a trial upon their merits at which witnesses are examined and a trained Bar may exert its talents for or against the bill, and secure its proper amendment. This would convert the lobby into a parliamentary bar ; would bring into the sunlight of publicity all schemes, be they of a sinister or beneficial character, affecting private individuals, corporations or localities, by requiring application for such special legislation to be filed before the opening of the session, and due notice of trial being given by advertisement, etc., thus giving to the community security that such legislation cannot be smuggled through at the latter end of the session, and enabling all opponents to be heard upon the merits as to the impropriety of such measures.

This division of private from local laws would tend also to elevate the character of public legislation ; would prevent public or general laws from being used as mere instruments of private gain, and effectually extirpate the evil which was intended to be removed—a corrupt lobby seeking to gain an advantage from the community by the secret or corrupt passage of improper private and local bills.

The almost unlimited power of municipalities

and counties to create debts for their own purpose or in aid of public works, led to a very formidable evil between 1850 and 1870 by the rolling up of enormous local public debts in aid of railway corporations. While in many instances this aid was perhaps necessary and judicious, yet it led to so much corruption and abuse throughout the States, and became so burdensome upon the localities, which frequently after the aid was voted failed to get the public improvement for the purposes for which they created the debt, and imposed taxes upon themselves, that in almost every State in the Union limitations were put upon the lending of the public credit or voting aid to railway corporations by counties and cities. And in many States such aid is now entirely prohibited.

The abuses incident to the distribution of public funds in aid of charities connected with religious establishments, where any particular religious denomination prevailed, as particularly in the city of New York, became of so grave a character that a constitutional amendment was adopted, and in many other States followed, by which cities were prohibited from granting any such aid to religious institutions. Exemptions from taxation have been a fruitful source of mischief in many States ; institutions of a charitable and religious nature have en-

joyed such exemption on the ground that imposing taxation upon the values of their property would be onerous in the extreme, it being dedicated in a certain sense to public use, but it was soon found that many of these institutions had exceptional advantages for property not actually used for charitable or religious purposes, and which property while held by them was free from the burdens imposed upon the taxpayers of the State. This led to amendments of some of the State Constitutions limiting such exemptions to the building and land only upon which is erected such charitable or religious institution, and to no other lands whatever.

The evils of corporate management have caused several of the States to provide as a remedy a system of minority representation in the election of their Boards of Direction as to all corporations thereafter to be organized ; both Pennsylvania and Missouri have engrafted such provisions upon their Constitutions. Illinois in the selection of the Legislature, and Pennsylvania in the election of Judges of the Supreme Court, are the only States which adopted minority representation for political offices. In Illinois minority representation is secured in all legislative districts by the provision that, in all elections of representatives, each qualified

voter may cast as many votes for one candidate as there are representatives to be elected, or may distribute the same or equal parts thereof among the candidates as he may see fit. This secures, in a very limited way, cumulative voting and therefore minority representation.

In some of the States the agitation for women's rights has resulted in securing for married women by constitutional provisions or legislation an undisturbed enjoyment of property rights. In none of the States, however, as yet have women become full citizens.

A fruitful source of recent constitutional amendments throughout the States has been the growing power of the railroad corporations. In almost all the Western States elaborate provisions are contained in the State Constitutions by recent amendments by which railways are declared to be public highways. The Legislature is required to pass laws limiting the amount of charges; the railway is constitutionally inhibited from discriminating in charges or facilities in transportation, or making any discrimination between transportation companies or individuals, either by way of abatement, drawback or otherwise, and also from making any preference in furnishing cars or motive power between different individuals, and a new set of

officers, known as Railway Commissioners, have been called into existence. In the State of New York no constitutional changes were made, but the Legislature of 1882 passed a Railroad Commission Act, and the Governor, in 1883, appointed the board thereunder.

In some of the States the evil of constant alterations in the law and the uncertainties created thereby have been sought to be prevented by constitutional changes making the sessions of the Legislature biennial instead of annual. This change appears to be a very short-sighted remedial measure for an undoubted evil. In the States having biennial Legislatures, great inconvenience at times results from the impossibility of promptly convening the Legislature for the purpose of passing a law of pressing necessity. If less attention is given to the quality of laws to be passed, as many bad laws can be passed in a short session of one Legislature as in two sessions of consecutive Legislatures. The true corrective of this evil is the one already referred to of properly methodizing legislation, and dividing public from private acts, creating also some degree of responsibility for public acts by having a council of revision or some public body to whom the public acts are to be referred, and which shall report upon the same as an Advisory Board to the

legislative bodies. Of course, the main evil of bad legislation arises from the fact that the legislators are not qualified for their work. Annual elections of large legislative bodies from the body of the people or the members of political caucuses, small pay for the time given to the public during that period, and the unfortunate American political conditions arising from the domination of the "boss" and caucus systems, bring as a general rule together in the legislative halls of the various States of the Union a body of men but little qualified for the most important work that can be entrusted into human hands—that of legislating wisely and well for their fellow-men. This evil will find its remedy in the United States only after a considerable period of time. One of the conditions of its correction is, as already observed, to dissolve political parties as at present constituted, by minority representation, and to introduce a thorough system of civil service reform.

The development of individual wealth will also in time come to the aid of the people of the United States; as through it they will possess a body of men so emancipated from all necessity of looking after their personal interests, that they can devote their whole time to the public service.

The change from annual to biennial sessions of
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the Legislature seems to be as inadequate for the purpose of curing the evils of bad legislation as would be the conduct of a man at the head of a large industrial establishment, who, finding that in consequence of its mismanagement by his superintendents he runs behindhand year after year, determines to work but half time as a corrective, instead of changing his managers and changing his methods. He may not (if he is doomed to run behindhand) get himself into the bankruptcy courts by working half time quite as fast as by working full time; but it clearly would be better for him either to shut up shop entirely, or to reform his methods of doing business. If biennial Legislatures are a remedy, not to have the Legislatures meet at all would be still a better one; but this mistaken measure will continue to be adopted precisely as the limitation upon bad special legislation has run its course until the evils occasioned by the supposed change or reform will bring the people of the United States to a realizing sense of the fact that they have gone for relief in the wrong direction.

The great evil in connection with State institutions is that which arises from the difficulty in dealing with municipalities so as to leave them on the one hand the power to govern themselves, and yet on the other to restrict a tendency which in all

American cities has developed itself to an alarming degree, its unlimited debt-creating power and methods of unwise taxation.

Within the twenty years from 1860 to 1880, the debts of the cities of the Union rose from about \$100,000,000 to \$682,000,000. From 1860 to 1875, the increase of debt in eleven cities was 270.9 per cent.; increase of taxation, 362.2 per cent.; whereas the increase in taxable valuation was but 156.9 per cent.; and increase in population but 70 per cent.

A large part of this increase of city indebtedness is doubtless due to the fact that in a concentrated community wherein the vast expenditures involved in city administration are to be made, such expenditures in themselves exercise a corrupting influence upon political elections, and create a numerous body of voters who, by reason of such interest in city expenditures, vote for and maintain in office persons pledged to increase them, or in any event not to reduce them. Political parties find in the salaries of city officials and the numerous indirect advantages arising from the contracts to be awarded by the city for all the purposes of city administration, such as water supply, street cleaning, sewerage, lighting, etc., opening of streets and highways, an enormous fund to perpetuate their power and to

supply them with the necessary means to manipulate the results of the ballot box ; but the evil is not due wholly to city administrators alone. The members of the Legislatures of the various States have found in the offices of a great city, subject to their sway, abundant opportunities for placing friends in office and also to secure personal advantages of a more lucrative character.

Before the charter amendments of 1871 for the city of New York, the annual tax levy of that city,—appropriations for the various purposes and objects of the city government—was prepared by the Legislature in the same manner as the supply bill for the State ; and the corruptions incident to the items which found place in such tax levy were greater at that period than have prevailed since the city government had power from that period on to determine upon the amount of tax to be raised and the purposes for which it was to be expended, without having recourse to State legislation. Numerous commissions for special municipal purposes were appointed by the Legislature, having independent powers to create debt without any vote of the city or any part of its inhabitants, and thus not only was the amount annually to be levied by tax heavily increased by legislative interference, but also the permanent debt was largely increased, frequently

without the consent and at all times without the power of the city to prevent such imposition.

Therefore, while it is true that the city administration, when left to itself under the peculiar circumstances of a large proletarian class in every city in the Union having voting power, is likely to run into excesses of debt and extravagant administration, recourse to the Legislature and leaving the city powerless to administer its own affairs, has been shown by past experience to result in even worse effects than decentralization of power leads to. This condition of affairs has led to an investigation of the question to what extent city administration is part of the government of the nation, and whether or not it is not largely the mere administration of private property upon a coöperative plan. Certainly many of the functions of the city government, such as lighting, paving, and laying out of streets, and the supply of water, are not truly governmental functions, but private services, which are performed under governmental forms for the owners of real estate who would themselves provide such service in the absence of any government taking it in charge. Various efforts have been made, therefore, to create somewhere in the city administration a veto power, lodged in the hands of tax and rent payers, upon such expendi-

tures without thereby limiting the suffrage as to any general governmental city functions. Thus far these efforts have not only proved unavailing, but have cast some degree of odium upon their advocates as being supposed to be adverse to the fundamental principles upon which the institution of American governments are based. That this charge against them is not true does not seem much to affect the question, because large bodies of people do not closely analyze, and it requires some intellectual effort to appreciate the difference between a city administration and the general Government. That the tax-eaters should not have absolute control over the taxes to be expended by the tax-payers would appear to be an entirely axiomatic truth in political philosophy. That the population of cities will increase, and that the pressure of competition will necessarily add largely to the proletariat class when any check comes to the prosperity of the people, would also appear to be almost as self-evident. Sooner or later, therefore, the people of the United States will either have to adopt some method of city administration not copied from the administrative forms of the United States or the States, by which such a regulation of the suffrage shall take place that those who have a permanent stake in the community shall, upon all expenditures involving large amounts in cities,

have some voice in determining the amount and purposes of such expenditures ; or fairly and freely recourse must be had to a system of minority representation to secure this result. Indeed the adoption of the latter reform would, without resort to any limitation of suffrage, in itself, check the extravagant, corrupt and useless expenditures in cities ; but in the absence of the introduction of any such system, the problem is becoming a very serious one as to how, with the growth of a pauper element, property rights in cities can be protected from confiscation at the hands of the non-producing classes. That the suffrage is a spear as well as a shield is a fact which many writers on suffrage leave out of sight; that it not only protects the holder of the vote from aggression, from which point of view it is unobjectionable, but also enables him to aggress upon the rights of others by means of the taxing power, is a fact to which more and more weight must be given as population increases and the suffrage is extended.

Some of the evils incident to city government in the United States are remediable by other means. One of the fruitful sources of evil influences exercised upon municipal administrations arises from a false distribution of power in the city governments. Departments which should be under some central

authority and responsible to it, the members of which should be removable by the Mayor at will, who in turn is responsible for the good government of the city to its inhabitants, have become independent bodies having debt-creating power without central control.

The city council chamber, even when not stripped of all responsible legislative functions, as has been notably the case in the city of New York, is called into being under a faulty system. Small districts are created for the election of members of the Board of Aldermen, and frequently a provision is made by which minorities and majorities in the districts have equal representation, so that either small politicians come to the surface in consequence of the small district, or caucus nominations are equivalent to an election, and the election becomes a mere form. This has at times been called minority representation, but it is not so in any proper sense, as it is mere party representation, and not representation of the people.

Attempts have been made in some of the Constitutions of the States by limiting the ratio of assessment to check extravagance, but this has proved quite futile as a remedy, because the law is evaded by increasing the assessment so as to keep within the ratio, so that in some of the cities where such a

limitation has prevailed the assessed value of property is largely in excess of its actual value, and the ratio of taxation takes a considerable proportion of the actual rental value of real property.

The laws in relation to cities are so constantly changed by the political parties in power within the State, so as to increase patronage in favor of the party in power, and to decrease it as against the adverse party, by either change of officials in office or a transfer of large powers from one department to another, that the Chief Justice of the State of New York in 1875, in a judicial opinion stated that "it is clearly unsafe for any one to speak confidently of the exact condition of the law in respect to public improvements in the cities of New York and Brooklyn. The enactments with reference thereto have been modified, superseded and repealed so often and to such an extent that it is difficult to ascertain just what statutes are in force at any particular time." This grave condition of affairs has led many of the States to appoint bodies of men especially commissioned to inquire into the causes of these evils, and to suggest remedies. New York, Pennsylvania and New Jersey have received reports from the commissions thus appointed, but the remedies proposed threatened so seriously to impair both the power and the

patronage of the politicians that they failed of acceptance.

It will be found that the main remedy for almost all the evils of administrative machinery of American cities will be in the adoption of a constitutional limitation upon the power to create indebtedness, and constitutional inhibition upon the Legislature to interfere with the city's administration unless such legislation is demanded by the inhabitants of the city in some formal manner. The remodeling of city charters so as to centre responsibility in the Mayor and the Board of Aldermen, and to subordinate all executive heads of departments to the Mayor and to the legislative department of the city ; the adoption of some system of minority representation, upon a scale sufficiently adequate to create a balance of power within party lines, so that groups of taxpayers may, independent of party dictation, inject representatives of property interests into the local legislative body ; the holding of municipal elections at a different time from State or National elections, and the growth of a conviction in the community which will in time lead them to regard municipal offices as business trusts having no relation to party divisions on political questions, and to repudiate the claim of party managers to make nominations for such offices as an act of usurpation.

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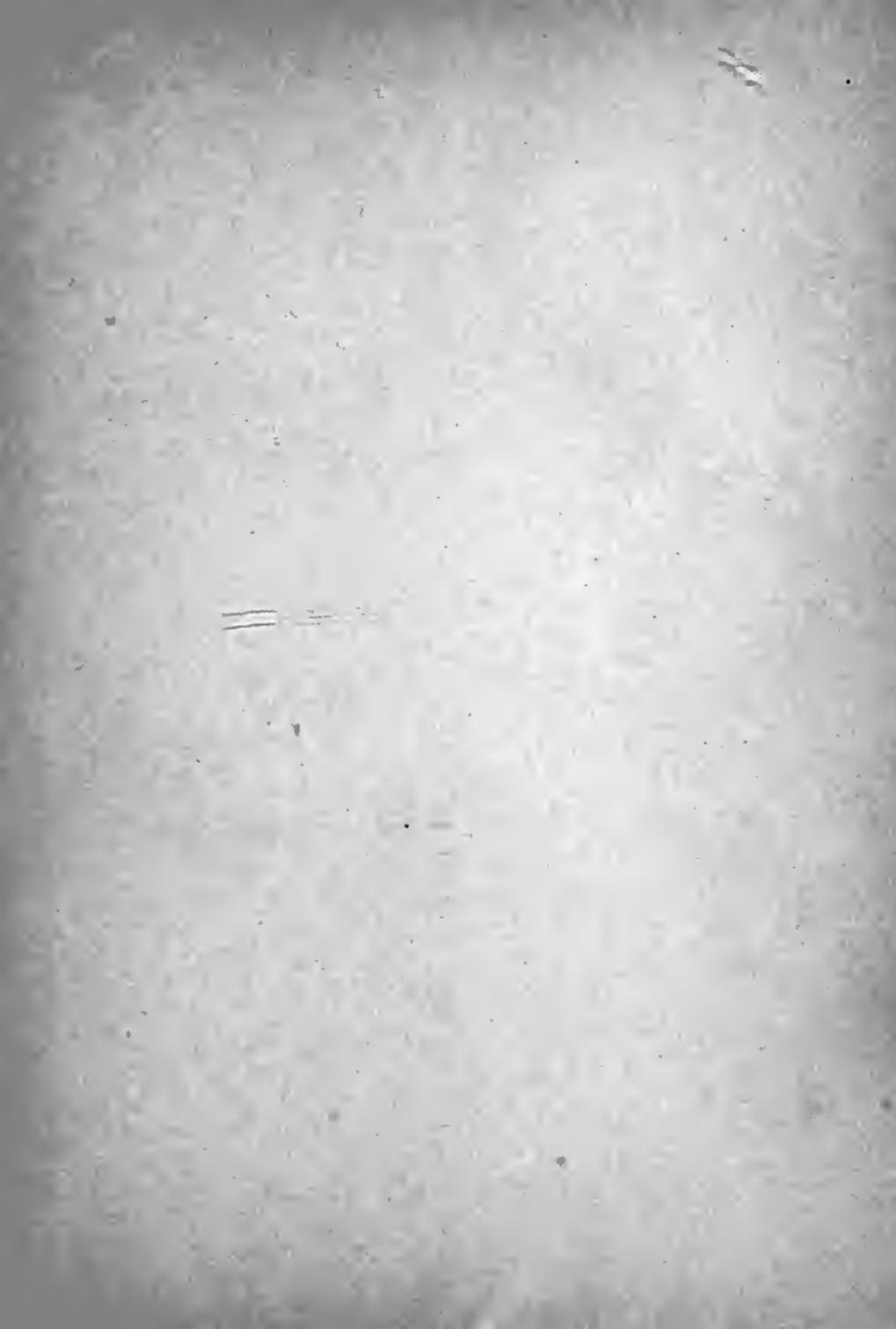
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